

# Chapter 140

## ZONING

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TOWN MAP

VILLAGE MAP

[HISTORY: Adopted by the Town Council of the Town of South Berwick 11-7- 1978. Sections 140-5D (1) (d), 140-6C, 140-9, 140-27A (3) (e), 140-31, 140-35A, 140-41B (6), 140-48I, 140-72, 140-73D (10), and 140-74D (2) amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Shoreland Zoning Amendments, July 1992; other amendments noted where applicable. Expanded R – 1 Zone and deleted B – 3, August 2002.]

**GENERAL REFERENCES**

Aquifer Protection Ordinance -	See Ch. 56
Building construction -	See Ch. 60
Flood damage prevention -	See Ch. 77
Historic Districts -	See Ch. 84
Planned growth -	See Ch. 102
Subdivision of land -	See Ch. 121

**ARTICLE I**  
**General**

**Section. 140-1. Short Title**

This chapter shall be known and may be cited as the "Zoning Ordinance of the Town of South Berwick, Maine", and will be referred to herein as "this chapter".

**Section. 140-2. Rules of Construction**

Captions and headings within this chapter are an integral part of the chapter and are intended to be utilized in determining the meaning and applicability of the sections they identify.

**Section. 140-3. Purpose and Effect**

**A. The Purposes of this Chapter are as Follows:**

- (1) To prevent and control water pollution and protect spawning grounds, fish and aquatic life and bird and wildlife habitats.
- (2) To conserve shore cover, visual as well as actual points of access to inland and coastal waters and points of natural beauty.
- (3) To provide for the public health and safety, environmental quality and economic well-being of the community.
- (4) To regulate land uses, building sites and placement of structures.
- (5) To conserve the historical and architectural integrity of the existing historic sites, landmarks and districts and to assure that future development is compatible both in character and in use.
- (6) To further the ideals and guidelines outlined in the South Berwick Comprehensive Plan.

**B.** The chapter does not grant any property rights; it does not authorize any person to trespass, infringe upon or injure the property of another; it does not excuse any person from the necessity of complying with other applicable laws and regulations.

**Section. 140-4. Basic Requirements**

All buildings or structures hereinafter, erected, reconstructed, altered, enlarged or moved and changes in uses of premises in the Town of South Berwick shall be in conformity with the provisions of this chapter.

## **Section. 140-5. Non-conformance**

**A. Purposes.** The intent of the Zoning Ordinance is to regulate nonconforming lots, uses and structures. The chapter intends to be realistic so that nonconforming vacant lots of record can be reasonably developed, nonconforming existing structures can be properly changed to other less nonconforming or to conforming uses. When nonconforming uses fall into disuse, the intent of these regulations is not to allow them to be reestablished after a twelve (12) month period of dormancy. These regulations are designed for the betterment of the community and for the improvement of property values.

### **B. General**

(1) Continuance, enlargement, reconstruction. Any use of land or any building, structure or parts thereof legally existing at the time of the adoption of this chapter, or at any time a zone is changed by amendment hereafter, which does not conform to the requirements of this chapter or its amendments may continue, but may not be extended, reconstructed, enlarged or structurally altered except as specified below.

(2) Transfer of ownership. Ownership of lots, structures and uses which remain lawful but become nonconforming by the adoption or amendment of this chapter may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this chapter.

(3) Restoration or replacement.

(a) This chapter allows the normal upkeep and maintenance of nonconforming uses and structures; repairs, renovations or modernizations which do not involve expansion of the nonconforming use or structure; and such other changes in a nonconforming use or structure as federal, state or local building and safety codes may require.

(b) Any nonconforming use or structure which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his agent may be restored or reconstructed within two (2) years of the date of said damage or destruction, provided that:

[1] The nonconforming dimensions of any restored or reconstructed structure shall not exceed the nonconforming dimensions of the structure it replaces.

[2] Any nonconforming structure shall not be enlarged except in conformity with this chapter and the Maine State Plumbing Code and within the existing lines of nonconformity.

[3] Any nonconforming use shall not be expanded in area.

- (4) Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed.

**C. Nonconforming Use**

- (1) Resumption prohibited. A lot, building or structure in which a nonconforming use is discontinued for a period exceeding twelve months or which is superseded by a conforming use may not again be devoted to a nonconforming use, even if the owner has not intended to abandon the use. This paragraph (1) shall not prevent resumption of a discontinued use which is non-conforming because it fails to comply with one or more of the dimensional requirements or performance standards of this ordinance, but which is listed as a permitted use or a use requiring Site Plan review or Major Site Plan Review in Table A, the Table of Land Uses. Such use may be resumed only if the resumed use complies with the dimensional requirements and performance standards to the fullest extent possible without making structural modifications to buildings or structures or altering the dimensions of the lot. If such use is listed on Table A as requiring site plan review or major site plan review, such review must be completed before the use is resumed.
- (2) A structure nonconforming as to use.
  - (a) A building or structure, nonconforming as to use, shall not be enlarged unless the nonconforming use is terminated.
  - (b) A nonconforming use of part of a building or structure shall not be extended throughout other parts of the building or structure unless those parts of the building or structure were manifestly arranged or designed for such use prior to the adoption of this chapter or of any amendment making such use nonconforming.
- (3) Change of use. An existing nonconforming use may be changed to another nonconforming use, provided that the proposed use is equal or more appropriate to the district than the existing nonconforming use and the impact on adjacent properties is less adverse than the impact of the former use as determined by the Planning Board. The case shall be heard under Site Plan Review (Section 140-77).
- (4) Use of land.
  - (a) A nonconforming use of land may not be extended into any part of the remainder of a lot of land.
  - (b) A nonconforming use of land which is incidental to or accessory to a nonconforming use of a building shall be discontinued at the same time the nonconforming use of the building is discontinued.

- (5) Notwithstanding the provisions of section {140-5.C (2)} and {140-5.C (4)} above, a nonconforming use of land, buildings or structures, may be enlarged, extended or expanded upon approval by the South Berwick Planning Board and subject to the following provisions:
- (a) A nonconforming use of land, buildings or structures may be enlarged, extended or expanded upon approval by the South Berwick Planning Board following Major Site Plan Review in accordance with section 140-77.
  - (b) The impact and the effects of the enlargement, extension or expansion on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the non-conforming use before the proposed enlargement, extension or expansion.
  - (c) In order to be eligible for an enlargement, extension or expansion under this subsection {140-5.C. (5)}, the non-conforming use must be lawfully non-conforming at the time of adoption of this subsection {140-5.C. (5)}.
  - (d) The expansion of non-conforming uses in the shoreland area is governed by the provisions 140-48.N.
  - (e) Approval of enlargement, extension or expansion of a use under this subsection (5) does not authorize enlargement, extension or expansion of the dimensions of a non-conforming structure. Non-conforming structures are subject to section 140-5.D. **[Approved 1-16-96.]**

**D. Nonconforming Structures.** (Pertaining to dimensional requirements). Applications regarding nonconforming use shall be reviewed under the provisions above.

- (1) Enlargements controlled.
- (a) A nonconforming structure shall not be added to or enlarged unless such addition or enlargement conforms to all the regulations of the zone in which it is located or a variance is obtained. In addition, state statutes must be adhered to.
  - (b) The addition of an open patio with no structures elevated above ground level shall not constitute the expansion of a nonconforming structure. The addition of steps or the enclosure of an existing porch shall not constitute the expansion of a nonconforming structure. But the addition of a deck, bulkhead or chimney does constitute the expansion of a nonconforming structure, and, therefore, they shall meet all the dimensional requirements of this chapter.
  - (c) The placing of a foundation below a lawfully existing nonconforming structure shall not constitute the expansion of the structure.

- (d) Construction of a foundation under an existing dwelling which expands habitable space shall be considered an expansion and shall be subject to the State Plumbing Rules (30-A M.R.S.A. Sec. 4201 et seq.) requiring new soils documentation.
  - (e) Within two hundred fifty (250) feet of water bodies protected either by the Resource Protection District or the Floodplain and Shoreland Slope District, no structure which is less than the required setback from the normal high-water mark of those water bodies shall be expanded toward the water.
  - (f) The conversion of a building existing on February 25, 1999 to multi-family use in the B1 District shall not be considered an expansion of the structure, provided the exterior dimensions of the structure are not altered. **[Added by Amendment January 25, 1999]**
- (2) Discontinuance. Discontinuance of the use of a legally existing nonconforming structure shall not constitute abandonment of the structure.
  - (3) Conforming use of the structure may be revived at any time.
  - (4) Lack of required parking or loading space. A building or structure which is nonconforming as to the requirements for off- street parking and/or loading space shall not be enlarged, added to or altered unless off-street parking and/or loading space is provided to bring parking and/or loading space into conformance with the requirements of this chapter for both the addition or alteration and for the original building or structure, except that the Planning Board may approve a lesser number of parking and/or loading spaces by applying the procedures and standards for Site Plan Review under Sec. 140-77 of this chapter.

**E. Nonconforming Lots of Record.**

- (1) Vacant lots. A nonconforming vacant lot of record may be built upon, provided that such lot is in separate ownership and not contiguous with any other vacant lot in the same ownership and that all provisions of this chapter and the Maine State Plumbing Rules, except lot size and frontage, can be met. Variance of yard or other requirements not involving area or frontage shall be obtained only by action of the Zoning Board of Appeals.
- (2) Built lots. A nonconforming lot of record that was built upon prior to the enactment or subsequent amendment of this chapter is subject to the following restrictions: The structure(s) may be repaired, maintained or improved and may be enlarged in conformity with all dimensional requirements of this chapter except lot area, lot width or lot frontage. If the proposed enlargement of the structure(s) cannot meet the dimensional requirements of this chapter, a variance shall be requested from the Board of Appeals. No enlargement shall commence until such a variance is obtained.

- (3) Contiguous built lots. If two (2) or more contiguous lots or parcels are in the same ownership of record at the time of adoption or amendment of this chapter, if all or part of the lots do not meet the dimensional requirements of this chapter and if a principle use exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and plumbing rules are complied with. If two (2) or more principle uses existed on a single lot of record on the effective date of this chapter, each may be sold as a separate lot, subject to Planning Board approval and conformity to the State of Maine Plumbing Rules.
- (4) Contiguous lots, vacant or partially built. If two (2) or more contiguous lots or parcels are in the same ownership of record at the time of or since adoption or amendment of this chapter, if either or both of these lots do not individually meet the dimensional requirements of this chapter or subsequent amendments and if two (2) or more of the lots are vacant or contain only an accessory structure, the lots shall be combined to the extent necessary to meet the dimensional standards.

**F. Actual Use Required.** Nonconforming use rights cannot arise by the mere filing of a notice of intent to build, an application for building permits or an application for required state permits and approvals. (Such rights usually arise when the actual review process on a complete application commences.)

#### **Section. 140-6. Amendment.**

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

- (1) Written petition of a number of voters equal to at least ten percent (10%) of the registered voters of town and following the provisions of the Town Charter, Article VIII, Section 2.
- (2) The Town Council, provided that a majority of the Council has so voted;
- (3) The Planning Board, provided that a majority of the Board has so voted; or
- (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, VI, if the amendment is initiated by the Town Council, the Planning Board or an application approved by the Planning Board; or
- (2) A Special Town Meeting following the provisions of the Town Charter, Article VIII, 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. The Department of Environmental Protection shall be notified by the Municipal Clerk of all amendments to this chapter affecting the Shoreland Zone within thirty (30) days after the effective date of such amendments.

**Section. 140-7. Repetitive petitions.**

No proposed change in this chapter which has been unfavorably acted upon by the Town Council or referendum vote shall be considered on its merits by the Town Council or referendum vote within two (2) years after the date of such unfavorable action, unless adoption of the proposed change is recommended by unanimous vote of the Planning Board and of the Town Council or has been submitted under Sec. 140-6A (1) above.

**ARTICLE II  
Construction of Language and Definitions**

**Section. 140-8. Construction of Language.**

- A. In the interpretation and enforcement of this chapter, all words other than those specifically defined in the chapter shall have the meanings implied by their context in the chapter or their ordinarily accepted meanings.
- B. The word "person" includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual or any other legal entity.
- C. The present tense includes the future tense, the singular number includes the plural; and the plural number includes the singular.
- D. The word "shall" and "will" are mandatory; the word "may" is permissive.
- E. The word "lot" includes the words "plot" and "parcel".

**Section. 140-9. Definitions**

In this chapter, the following terms shall have the following meanings:

**ABUTTERS:** All property owners within two hundred and fifty feet (250) of subject property lines, including property owners across roadways and bodies of water.

**ACCESSORY APARTMENT:** A separate dwelling unit located within and subordinate to a single family detached dwelling.

**ACCESSORY USE OR STRUCTURE:** A use or structure which is customarily and in fact both incidental and subordinate to the principal use or structure. The term "incidental" in reference to the principal use or structure shall mean both subordinate and minor in significance to the principal use or structure and attendant to the principal use or structure. Such "accessory uses", when aggregated, shall not subordinate the alleged principal use of the lot. Trailers utilized for storage are considered in this category.

**AGGRIEVED PARTY:** A person who demonstrates standing to appeal from a decision rendered under this chapter.

**AGRICULTURE, LIVESTOCK:** See "Animal Husbandry".

**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.

**ALTERATION:** Any change, addition or modification in construction, other than cosmetic or decorative, or any change in the structural members of buildings, such as bearing walls, columns, beams or girders.

**AMUSEMENT CENTER:** Any private or commercial premises which is maintained or operated primarily for the amusement, patronage or recreation of the public, containing an aggregate of four (4) or more table sports, pinball machines, video games or similar mechanical or electronic games, whether activated by coins, tokens or discs, or activated through remote control by the management.

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

**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.

**AUTHORIZED AGENT:** An individual or a firm having written authorization to act on behalf of a property owner, signed by the property owner and notarized.

**AUTOMOBILE GRAVEYARD:** Shall mean a yard, field or other area, used as a place of storage for three or more unserviceable (incapable of passing a state highway safety inspection,) discarded, worn out or junked motor vehicles. Temporary storage by an establishment or place of business which is engaged primarily in doing auto body repair for the purpose of making repairs to render a motor vehicle serviceable shall not constitute an automobile graveyard.

**AUTOMOBILE REPAIR GARAGE:** A place where, with or without the attendant sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles, collision service, (such as body, frame or fender straightening and repair,) overall painting and undercoating of automobiles.

**AUTOMOBILE SERVICE STATION:** A place where gasoline or any other engine fuel (stored only in underground tanks) kerosene or motor oil and lubricants or grease are retailed directly to the public on the premises, including the sale of minor accessories and the servicing and minor repair of automobiles, not including storage or unlicensed vehicles and not including body, frame or fender straightening and repair.

**BANK:** An establishment for the custody, loan, exchange or issue of money, for the extension of credit and for facilitating the transmission of funds.

**BASAL AREA:** Means the area of cross section of a tree stem at Diameter Breast Height (4.5 feet above the ground) and includes bark.

**BASAL AREA, RESIDUAL:** Means 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."

**BASEMENT:** The enclosed area underneath a structure, typically having a masonry floor and walls which are part of the structure's foundation. The clear height up to the joists supporting the floor directly above is four (4) feet or greater.

**BED-AND-BREAKFAST:** A single-family dwelling in which lodging or lodging and meals are offered to the general public for compensation, offering no more than five (5) bedrooms for lodging purposes with a maximum stay of no more than fourteen (14) days. [Amended 5/23/94]

**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.

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

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

**BUFFER:** An area which serves to provide a visual, aesthetic, and noise reduction barrier between conflicting land uses.

**BUILDING:** Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or personal property.

**BUILDING HEIGHT:** The vertical distance between the highest point of the roof and the average grade of the ground adjoining the building.

**CAMP:** Any building, seasonal in nature, such as cabins or hunting shelters intended for temporary or intermittent use not to exceed three months per year. Each camp must have sanitation facilities in compliance with the State of Maine Subsurface Wastewater Disposal Rules.

**CAMPGROUND:** Any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to; tents, recreational vehicles or other shelters.

**CELLAR:** See "Basement."

**CEMETERY:** Property used for interring the dead.

**CHANGE OF USE:** A change from one category in the land use table to another or the addition of a new category of use to an existing use.

**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."

**CHURCH:** A building or structure or group of buildings or structures, designed, primarily intended and used for the conduct of religious services.

**CIVIC CENTER:** A building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, convention and entertainment facilities owned and/or operated by a governmental agency.

**CLUB:** Any association of persons organized for social, religious, benevolent or academic purposes whose facilities are open to members and guests, including fraternities, sororities and social organizations.

**CLUSTER DEVELOPMENT:** A development in which dimensional requirements may be reduced in order to promote the retention of open space.

**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.

**CODE ENFORCEMENT OFFICER:** A person appointed by the Town Manager to administer and enforce this chapter. Reference to the "Code Enforcement Officer" may be construed to include Building Inspector, Plumbing Inspector; Electrical Inspector and the like, where applicable.

**COMMERCIAL CENTER:** This shall include commercial premises such as retail stores or service establishments which occupy premises designed, operated or utilized as a single development, which (a) accommodate more than one business and (b) less than 12,000 square feet of gross floor space.

**COMMERCIAL COMPLEX:** Any concentration of retail stores or service establishments occupying premises which are designed operated or utilized as a single development which encompass twelve thousand (12,000) square feet or more of gross floor space. This definition shall also include large department stores or grocery stores which meet the above floor space requirements.

**COMMERCIAL RECREATION:** Any commercial enterprise which receives a fee in return for the provision of some recreational activity, including but not limited to racquet clubs, health facility, amusement parks, golf courses, etc., but not including amusement centers, as defined herein.

**COMMUNITY LIVING FACILITY:** A housing facility for 8 or fewer mentally handicapped and developmentally disabled persons which are approved, authorized, certified, or licensed by the state. A community living facility may include a group home, foster home or intermediate care facility.

**COMMUNITY SERVICES:** Police and Fire Department protection, schools, library, rescue, etc., and not hereinafter defined as utility.

**CONFORMING USE:** A use of buildings, structures or land which complies with all applicable provisions of this chapter.

**CONGREGATE HOUSING:** A dwelling providing shelter and services for the elderly which may include meals, housekeeping, and personal care assistance.

**CONSTRUCTED:** Includes built, erected, altered, reconstructed, moved upon or any physical operations on the premises which are required for construction. Excavation, fill, drainage and the like shall be considered a part of construction.

**CORD:** Means a unit of measure of wood products 4 feet wide, 4 feet high, and 8 feet long. Or its equivalent, containing 128 cubic feet when wood is ranked and well stacked. Any voids that will accommodate a stick, log, or bolt of average dimensions to those in that pile shall be deducted from the measured volume.

**DAY-CARE CENTER:** An establishment where more than twelve (12) children will be cared for in return for payment. [Amended 11-27-1989]

**DECORATIVE CHANGES:** Repainting; residing, reroofing, removing or replacing trim, railings or other nonstructural architectural details; or the addition, removal or change of location of windows and doors.

**DISPOSAL:** The intentional discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or liquid waste into or onto any land or water so that the solid waste or any constituent thereof may enter into the environment or be emitted into the air or discharged into any waters, including ground waters.

**DISTRICT:** A specified portion of the municipality, delineated on the Official Zoning Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this chapter.

**DWELLING, SINGLE-FAMILY:** Any structure containing only one (1) dwelling unit.

**DWELLING, TWO-FAMILY:** A building containing only two (2) dwelling units for habitation by not more than two (2) families.

**DWELLING, MULTIFAMILY:** A building containing three (3) or more dwelling units, such buildings being designed exclusively for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units.

**DWELLING UNIT:** A building or portion thereof providing complete housekeeping facilities for one (1) family and which contains independent areas for living, cooking, sleeping, bathing and sanitary facilities. The term shall not be deemed to include a recreational vehicle.

**EARTH:** Topsoil, sand, gravel, clay, peat, rock or other minerals.

**ESSENTIAL SERVICES:** Gas, electrical, communication facilities, steam, fuel or water transmission or distribution systems, collection, supply or disposal systems. Such systems may include poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories, but shall not include buildings which are necessary for the furnishing of such services or transmission towers as defined herein.

**EXCAVATION:** Any removal of earth from its original position.

**EXISTING RIGHT-OF-WAY:** A strip of land which is dedicated for the sole purpose of providing access to a parcel or parcels of land abutting, described on a deed recorded prior to the effective date of this chapter.

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

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

**EXTRACTIVE INDUSTRY:** Any operation engaged in the removal of more than ten (10) cubic yards in any twelve-month period of topsoil, sand, gravel, clay, rock or other like material from its natural location and for transportation off the lot except as may be exempted within the extractive industry performance standards in this chapter.

**FAMILY:** One (1) or more persons occupying a premises and living as a single housekeeping unit, as distinguished from a group occupying a boardinghouse, lodging house or hotel as herein defined.

**FAMILY DAY CARE:** An establishment, including a private residence as defined under the Rules of the Maine Department of Human Services, Chapter 38, Licensing of Day-Care Homes. [Added 11-27-1989]

**FILLING:** Depositing or dumping any matter on, or into, the ground or water.

**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.

**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.

**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.

**FLOOR AREA, GROSS:** The sum, in square feet, of the floor areas of all roofed portions of a building, as measured from the exterior faces of the exterior walls.

**FLOOR AREA, NET:** The total of all floor areas of a building, excluding the following: stairwells, and elevator shafts, equipment rooms, interior vehicular parking or loading and all floors below the first or ground floor, except when used or intended to be used for human habitation or service to the public.

**FOREST MANAGEMENT ACTIVITIES:** Including cruising and other forest resource evaluation activities, pesticide or fertilizer application, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, and the construction, creation or maintenance of land management roads.

**FOREST MANAGEMENT PLAN:** Means a site-specific document signed by a professional forester outlining proposed activities to ensure complete standards and regeneration requirements established by [Title 12 MRSA 8868 *et seq.*] and any rules promulgated by the Department of Conservation.

**FORESTER, LICENSED PROFESSIONAL:** Means a forester licensed under [32 MRSA] c.75.

**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 11.

**FRONTAGE:** The horizontal distance measured along the lot line between the intersections of the side lot lines with the private or public right-of-way.

**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.

**FROST WALL:** A masonry foundation wall extending below the ground surface, supported by footings located below the frost line to protect the structure from frost heaves.

**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, 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.

**GRADE:** In relation to buildings, the average of the finished ground level at the center of each wall of a building.

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

**GREENHOUSE:** A glass or plastic enclosure used for cultivation or protection of tender plants.

**GUEST HOUSE:** See "hotel."

**HEALTH-CARE FACILITY:** An institution providing overnight health services and/or medical or surgical care. Laboratories, outpatient, training, central service and staff offices are related uses. A medical- care facility includes hospitals, nursing homes, convalescent centers and similar service facilities.

**HEIGHT OF A STRUCTURE:** The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

**HOME OCCUPATION:** An occupation or use which is conducted by a person(s) on the same lot where such person resides and which does not change the character thereof. Home occupations may be classified into either a "minor" or "major" home occupation as detailed in Section 140-43.

**HOSPITAL:** An institution providing, but not limited to, overnight health services, primarily for inpatients, and medical or surgical care for the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central services facilities and staff offices.

**HOTEL:** A building containing guest rooms kept, used, maintained or held out to the public as a place where lodging and/or meals are provided. "Hotel" shall include motel, guest houses, inns, tourist courts, cabins and motor lodges. The "hotel" may contain such accessory services and facilities for the benefit of its guests and only incidentally for the general public as newsstands, personal grooming facilities and restaurants.

**INDIVIDUAL PRIVATE CAMPSITE:** An area of land which is not associated with a campground, but which is developed for repeated camping, by only one group not to exceed ten (10) individuals, and which involves site improvements which may include but not be limited to gravel pads, parking areas, fire places, or tent platforms. Individual private campsites may be utilized for a period not to exceed three months total in any given calendar year.

**INDUSTRIAL:** The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

**INCINERATION:** A process used for volume reduction of solid waste by means of controlled combustion. This term does not include cone burners or the practice of open burning.

**JUNKYARD:** A yard, field or other area used as place of storage for any of the following:

- A. Discarded, worn-out or junked plumbing and heating supplies, household appliances and furniture.
- B. Discarded, scrap and junk lumber.
- C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber or plastic debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material.
- D. Garbage dumps, waste dumps and sanitary fills.
- E. Unserviceable, discarded, worn-out or junked motor vehicles and motor vehicle parts, unserviceable bikes, lawn mowers and other similar items.

**KENNEL:** Any place, building, tract or land, abode, enclosure or vehicle where three (3) or more dogs or three (3) or more cats are kept for any purpose for a fee.

**LANDFILL:** A system of trash and garbage disposal in which the waste is buried between layers of earth.

**LIGHT INDUSTRY:** Uses intended primarily for the conduct of light manufacturing, assembling and fabrication and for associated warehousing, wholesaling and service operations that do not depend primarily on frequent personal visits of customers or clients or a high number of truck and/or freight visits per day. Such uses should accommodate a broad spectrum of clean industries noticeable glare, noise, vibration, odor or other nuisance at the property lines of the property on which the use is situated. Light industrial uses might include software or computer development, electronics assembly, book publishing, science and research facilities, and micro-breweries. [Added 10/24/94]

**LOT:** A parcel or tract of land occupied or capable of being occupied by one (1) principal use or building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by the chapter, having frontage upon a street, an existing deeded right-of-way or a new deeded right-of-way with a minimum fifty-foot width and with each principal building located on land identified as allocable to that building which meets the minimum dimensional requirement for that district as provided in this chapter.

**LOT AREA:** The total horizontal area within the lot lines.

**LOT, CORNER:** A lot with at least two (2) contiguous sides abutting upon a street or right-of-way.

**LOT, COVERAGE:** The percentage of the lot covered by all buildings, parking areas, roadways, sidewalks and driveways.

**LOT, INTERIOR:** Any lot other than a corner lot.

**LOT LINES:** The lines bounding a lot as defined below:

- A. **FRONT LOT LINE:** On an interior lot, the line separating the lot from the street or right-of-way. On a corner or through lot, the line separating the lot from either street or right-of-way.
- B. **REAR LOT LINE:** The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front line, not less than ten (10) feet long, lying farthest from the front lot line. On a corner lot, the "rear lot line" shall be opposite the front lot line of least dimension.
- C. **SIDE LOT LINE:** Any lot line other than the front lot line or rear lot line.

**LOT OF RECORD:** A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the County Registry of Deeds.

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

**LOT, THROUGH:** Any interior lot having frontages on two (2) more or less parallel streets or rights-of-way or between a street and a body of water or a right-of-way and a body of water or between two (2) bodies of water, as distinguished from a corner lot. All sides of "through lots" adjacent to streets, rights-of-way and bodies of water shall be considered frontage, and front yards shall be provided as required.

**LOT WIDTH:** The horizontal distance between the side lot lines, measured at the front setback line.

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

- A. Units constructed after June 15, 1976, commonly called "newer mobile homes" and constructed in compliance with the US Department of Housing and Urban Development Standards.
- B. Units commonly called "modular homes" which are constructed in compliance with [*Title 10 M.R.S.A Section 9001, et seq.*]

**MANUFACTURING:** The making of goods and articles by hand or machinery. Manufacturing shall include assembling, fabricating, finishing, packaging or processing.

**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.

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

**MINIMUM LOT AREA:** The land area of a parcel not including the area of any land which is part of a right-of-way for a thoroughfare or easement, such as but not limited to surface drainage easements or traveled rights-of-way (but not including utility easement servicing that lot,) subject to tidal action or which is part of a major or minor freshwater wetland.

**MOBILE HOME:** see "Manufactured Home."

**MOBILE HOME PARK:** A parcel of land under unified ownership approved by the municipality for the placement of three (3) or more "newer mobile homes." This does not apply to modular homes as described.

**MODULAR HOME:** A home in which entire sections are constructed in a factory and shipped to their eventual location where very little on-site labor is required to piece the sections together.

**MOTEL:** A building or group of buildings in which lodging is offered to the general public for compensation and where entrance to rooms maybe made directly from the outside of the building.

**NEIGHBORHOOD CONVENIENCE STORES:** A store of less than one thousand five hundred (1,500) square feet of floor space intended to service the convenience of a residential neighborhood and not serving gas or food that would normally be served in either a restaurant or fast food restaurant as defined herein.

**NET RESIDENTIAL ACREAGE:** The gross acreage available for development, excluding the area for streets or access and the areas which are unsuitable for development.

**NET RESIDENTIAL DENSITY:** The number of dwelling units per net residential acre.

**NOISE:** Related definitions:

- A. **dB(A):** The abbreviation designating both the unit of measuring sound level, the decibel and the mode of measurement that uses the A-weighting of a sound level meter.
- B. **DECIBEL (dB):** The practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to twenty (20) times the logarithm to the base of 10 of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound [twenty (20) micropascals;] abbreviated dB.
- C. **LOUD AND UNREASONABLE NOISE:** Any sound, the intensity of which exceeds the standards set forth in Sec. 140-28 of this chapter.

**NONCONFORMING LOTS OF RECORD:** A single lot of record which, at the effective date of adoption or amendments of this chapter, does not meet the area, frontage, width or depth requirements of the district in which it is located.

**NONCONFORMING STRUCTURE:** A structure that does not meet one (1) or more of the following dimensional requirements: setbacks, height, yard and lot coverage. It is allowed solely because it was in lawful existence at the time this chapter or subsequent amendments took effect.

**NONCONFORMING USE:** Use of premises that is not permitted to locate in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this chapter or subsequent amendments took place.

**NON-HAZARDOUS SOLID WASTE:** Solid waste which does not present a potential or present danger to people, animals or the natural environment.

**NON-HAZARDOUS SOLID WASTE FACILITY:** Any land, buildings, structures or combination thereof used for the processing of non-hazardous solid waste, excluding municipally operated facilities for disposal of non-hazardous used building materials and discarded vegetation resulting from normal residential maintenance activities.

**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 the open water.

**NURSERY:** An area where plants (trees and shrubs) are grown for transplanting, for use as stocks for budding or grafting or for sale.

**NURSING HOMES:** A facility where maintenance and personal or nursing care are provided for persons who are unable to care for themselves.

**OFFICIAL BUSINESS DIRECTIONAL SIGNS:** A sign erected and maintained in accordance with the Maine Traveler Information Services Act, [23 M.R.S.A. Sec. 1901 et seq.,] which points the way to public accommodations and facilities.

**PARKING SPACE:** A minimum area of one hundred and eighty (180) square feet, exclusive of drives, aisles or entrances, fully accessible for the storage or parking of vehicles.

**PERIOD OF OPERATION:** The opening and closing times of certain businesses or activities regulated under the conditional use process. This term may apply to hours of the day or night, days of the week or months of the year.

**PERSONAL SERVICE ESTABLISHMENT:** A commercial use, primary concern of which is the rendering of services rather than the sale of products and which does not meet the home occupation standards and definition as stated in this ordinance. Personal services may include, but not be limited to barbershops, hairdressers, clothing rental, shoe repair and dog grooming. It shall not include gasoline stations, hotels, bed and breakfasts, banks, or restaurants.

**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.

**PLANNED RESIDENTIAL DEVELOPMENT:** A land development project comprehensively planned as an entity via a unitary site plan which permits flexibility in building siting, mixtures of housing types and land uses, usable open spaces and the preservation of significant natural features.

**PLANNED UNIT DEVELOPMENT (PUD):** See "Planned Residential Development."

**PRINCIPAL BUILDING:** The building in which the primary use of the lot is conducted.

**PRINCIPAL USE:** The primary use to which the premises are devoted and the main purpose for which the premises exist.

**PRIVATE ROAD:** A street serving no more than 5 dwelling units that is privately maintained. It shall be on the same level of hierarchy as residential street except a lesser design standard may be allowed. The development shall be deed restricted from further subdivision and receiving road maintenance services including, but not limited to snowplowing, drainage, grading, etc. until the private road is built to the standards of a residential access street and accepted by the South Berwick Town Council.

**PROFESSIONAL OFFICES:** The place of business, which can not be classified as a home occupation by the definition and standards of this ordinance, for doctors, lawyers, accountants, architects, surveyors, real estate agents, insurance agents, psychiatrists, psychologists, counselors, engineers, and the like but not including financial institutions or personal services.

**PUBLIC PARK:** An area designated specifically for passive recreational use by the general public and involving minimal structural development.

**PUBLIC RECREATION:** A recreational facility operated by a governmental agency and open to the general public.

**PUBLIC SEWERS:** Those owned and operated by a public utility.

**PUBLIC UTILITY:** Any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, communication facilities, transportation or water to the public.

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

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

**RECREATIONAL VEHICLE:** A vehicle or vehicular attachment designed for temporary sleeping or living quarters for one (1) or more persons which is not a dwelling and which may include a pickup camper, travel trailer, camp trailer and motor home.

**RESTAURANT:** An establishment where meals are prepared on the premises and served to the public for consumption on the premises; and where no food or beverages are served directly to occupants of motor vehicles or directly to pedestrian traffic from an exterior service opening or counter, or any combination of the foregoing; and where customers are not encouraged by the design of the physical facilities, by advertising or by the servicing or packaging procedures to take out food or beverages for consumption outside the enclosed building.

**RESTAURANT, TAKE OUT / FAST FOOD:** An establishment where food is prepared on the premises and where the normal operation of the business is described substantially by the following factors:

- A. The establishment offers both "eat-in" and "take-out service;
- B. Customers place their orders at a counter or window (including drive-up windows) rather than at a table served by a waiter or waitress;
- C. The predominant method of delivery is that customers pick up their own orders at a counter or window and then either carry the orders to a table or seating area within the restaurant or take the orders out of the restaurant for consumption outside of the building (table service by the establishment's staff during limited hours or occasional delivery of food items to a customer table or seating area will not be deemed to be the predominant method of delivery;) and

- D.** The manner in which the food is prepared, presented and packaged is essentially the same whether the customer chooses "eat-in" or "take-out."

**RETAIL BUSINESS:** A business establishment engaged in the sale, rental or lease of goods or services to the consumer for personal use or household consumption and not for resale.

**RIPRAP:** Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

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

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

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

#### **SCHOOLS:**

**A. PUBLIC AND PRIVATE:** (including parochial schools) Institutions for education or instruction of any branch or branches of knowledge or a place where knowledge is imparted and which satisfies either of the following requirements:

- (1) The school is not operated for a profit or as a gainful business; or
- (2) The school teaches courses of study which are sufficient to qualify attendance there as compliance with state compulsory education requirements.

**B. COMMERCIAL:** Schools or institutions which are commercial or profit-oriented. Examples thereof are dancing, music, riding, and correspondence, aquatic schools, driving or business.

**SETBACK:** The horizontal distance from a lot line to the nearest part of a structure.

**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.

**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.

**SIGNS:** A name, identification, description, display, notification or illustration which is affixed to, painted or represented, directly or indirectly, upon a building, structure, parcel or lot and which relates to an object, product, place, activity, person, institution, organization or business on the premises.

**SLUDGE SPREADING:** The land application of a mixture of organic and residual materials produced by industrial processes, water or sewage treatment processes or domestic septic tanks.

**SOLID WASTE:** Useless, unwanted or discarded solid material with insufficient liquid or gaseous content to be free-flowing, including, by way of example and not limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but not including septic tank sludge, other liquid waste treatment sludge and agricultural waste.

**SOUND LEVEL:** The sound pressure level measured to decibels with a sound level meter set for A-weighting; "sound level" is expressed in dB(A).

**SOUND LEVEL METER:** An instrument for the measurement of sound levels conforming to American National Standards Institute Type I or II Standards.

**SOUND PRESSURE LEVEL:** The level of a sound measured in dB units with a sound level meter which has a uniform (flat) response over the band of frequencies measured.

**STANDING:** The legal right to challenge a decision rendered under this chapter. In order to have "standing", a person must demonstrate particularized injury from the challenged decision.

**STORAGE:** The collection and/or containment of solid waste on a temporary basis pending permanent disposal.

**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.

**STREET:** An existing state, county or town way or a street dedicated for public use and shown upon a plan duly approved by the Planning Board and recorded in the York County Registry of Deeds or a street dedicated for public use and shown on a plan duly recorded in the York County Registry of Deeds prior to the establishment of the Planning Board and the grant to the Planning Board of its power to approve plans. The term "street" shall not include those ways which have been discontinued or abandoned.

**STRUCTURAL MODIFICATIONS:** Any change involving the removal or replacement of supporting members of a building, such as posts, columns, plates, joists or girders.

**STRUCTURE:** Anything constructed or erected, the use of which requires a fixed location on or in the ground or an attachment to something having a fixed location on the ground, including buildings, billboards, signs, commercial park rides and games, carports, porches and other building features, but not including fences. [Added 4-11-1988]

**SUBDIVISION:** As defined in Section 121-11 of the South Berwick Code, Subdivision of Land.

**SUBSTANTIAL IMPROVEMENT:** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or for any alteration a structure listed on the National Register of Historic Places or a State Inventory of Historical Places.

**SUBSTANTIAL START:** Completion of thirty (30%) percent of a permitted structure or use measured as a percentage of estimated total cost.

**SWIMMING POOL:** A man-made receptacle or excavation designed to hold water to a depth of at least twenty- four (24) inches, primarily for swimming or bathing, whether in the ground or above the ground.

**TEMPORARY STORAGE FACILITIES:** A structure without a permanent foundation capable of providing shelter to anything placed on, in or under the structure, including but not limited to tents and trailers. Specifically excluded are pole barns used to shelter farm animals and/or farm equipment.

**TIMBER HARVESTER:** Means a person, company, or other entity who harvests, or contracts to harvest, a forest product.

**TIMBER HARVESTING:** Means the cutting or removing of timber for the primary purpose of selling or processing forest products. "Timber harvesting" does not include the clearing of land for approved construction. [Added 4-11-1988]

**TRANSMISSION TOWER:** A structure used commercially for transmitting and/or receiving radio, television or electrical waves but not including telephone and electrical poles.

**TRIBUTARY STREAM:** A channel between defined banks 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.

**UNDUE HARDSHIP:**

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

**VARIANCE:** A "variance" is a relaxation of the terms of this chapter. "Variances" permissible under this chapter are limited to dimensional and area requirement. No "variance" shall be granted for the establishment of any use otherwise prohibited, nor shall a "variance" be granted because of the presence of nonconformities in the immediate or adjacent areas.

**VEHICLE SALES:** Any business which involves a parking or display area for the sale of new or used cars, trucks, motorcycles, campers, farm equipment, recreational vehicles, mobile homes or similar products.

**VERMIN:** Animals, birds or insects capable or acting as a host for, or carrier of germs.

**VETERINARY HOSPITAL OR CLINIC:** A building used for the diagnosis, care and treatment of ailing or injured animals, which may include overnight accommodations. The boarding of healthy animals shall be considered a kennel.

**VOLUME OF A STRUCTURE:** The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

**WAREHOUSE:** A structure or room for the storage, deposit or stocking of merchandise or commodities.

**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.

**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.

**WHOLESALE DISTRIBUTION:** On premises storage, repacking, sale and/or distribution of goods to customers engaged in the business of reselling or conveying the goods to others. This definition shall not include the sale and/or distribution of commodities to consumers on a retail basis.

**YARD:** The area of land on a lot not occupied by the principal building.

**YARD, FRONT:** The area of land between the front lot line and the nearest part of the principal building.

**YARD, SIDE:** The area of land between the side lot line and the nearest part of the principal building.

**YARD, REAR:** The area of land between the rear lot line and the nearest part of the principal building.

**YARD SALE:** The activity of selling or offering to sell household or personal articles (such as, but not limited to, furniture, tools, or clothing) on the lot on which the owner of the articles resides, provided that such activity occurs on no more than twelve days during any calendar year commencing on or after January 1, 1994. Any such activity occurring on more than twelve days per calendar year shall constitute a retail store. Any such activity commenced prior to the adoption of this ordinance (10/25/93) shall not constitute a lawful non-conforming use under Section 140-5 of this ordinance and can occur only as permitted pursuant to this definition. The term yard sale shall include garage sales, porch sales, tag sales, and the like.

### **Article III Establishment of Districts**

#### **Section. 140-10. Zoning Districts.**

To implement the provisions of this chapter, the municipality of South Berwick is hereby divided into the following districts:

**A. Residential Zones:**

- (1) R1 Village Residential District.
- (2) R1A Village Residential Growth District
- (3) R2 Developing Residential District.

- (4) R2A Suburban Growth District
- (5) R3 Transitional Residential District.
- (6) R4 Rural Residential District.
- (7) R5 Agamenticus Resource District

**B. Business Zones:**

- (1) B1 Central Commercial District.
- (2) B2 Mixed-Use District.

**C. Industrial Zones:**

- (1) I1 Industrial District.

**D. Overlay Zones:**

- (1) RP Resource Protection District.
- (2) SP Shoreland/Slope District.
- (3) RO Rural Overlay Zone (R4 and R5 Districts)
- (4) MFW Minor Freshwater Wetland

**Section. 140-11. Official Zoning Map.**

- A. Said districts are located as shown on the Official Zoning Map, entitled "Zoning Map of South Berwick, Maine," based upon the written descriptions contained in Sec. 140-12 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 Zoning Map may be seen in the municipal offices.
- B. In cases of disagreement between the Zoning Map and the written descriptions in Sec. 140-12, the written description shall prevail.

**Section. 140-12. 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) Hoopers Swamp. [**Added 3-13-1989**]
  - (i) Leighs Mill Pond. [**Added 3-13-1989**]
  - (j) Salmon Falls River/Piscataqua River to its tidal limits
  - (k) Freshwater wetlands, salt marshes, salt meadows, and wetlands associated with great ponds and rivers which are rated "high" or "moderate" value by the Department of Inland Fisheries and Wildlife (IFW) based on their most recent mapping.
- (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 140-12.B.)
    - (f) Land areas along rivers subject to severe erosion, undercutting, or river bed 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, September, 1994.”

These zones will be established only after public notice and a public hearing in accordance with Section 140-6 of this Ordinance. For all new wellhead protection areas, Resource Protection Zones will be based on hydro geological studies/recommendations and will be established according to Section 140-6. **[Adopted 5-28-96]**

- (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.

- (3) 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 Zoning Map of South Berwick.

- (a) The Balancing Rock

- (b) The Spring Hill Overlook

- (c) The Gorge

**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) Frost Brook.

- (f) Lover's Brook.
  - (g) Shorey's Brook
  - (h) Quamphegan Brook.
  - (i) Lord Brook.
  - (j) Hoopers Brook.
  - (k) Knights Brook.
  - (l) Warren Brook, south of Bicknel Mountain.
  - (m) Hussey Brook, north of Great Hill.
  - (n) Bennett Brook
  - (o) Hamilton Brook
  - (p) Driscoll Brook
  - (q) Salmon Falls River above Route 4 (high water line shall be measured from the edge of any associated wetland.)
- (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. Village Residential District - R1:** That land immediately surrounding the village more particularly bounded: beginning at the thread of the Salmon Falls River on lower Main Street and proceeding downstream to the confluence of the Great Works and Salmon Falls River below Leighs Mill Pond; then proceeding in an easterly direction through the center of Leighs Mill Pond and the thread of the Great Works River to the bridge on Brattle Street then extending 200 feet on Brattle Street in a northerly direction to the intersection of Route 236; then following the centerline of Route 236 for 200 feet to the intersection of Academy Street; then proceeding along the centerline of Academy Street for approximately 800 feet to the intersection of Academy Street and Drury Lane; then proceeding in an easterly direction then northerly along the westerly side of Map 32, Lot 71 to the northwest corner of the lot; then along the rear lot lines of Map 32, lots 53 – 71 in the Old Mill Subdivision; then proceeding down the side lot line of Lot 53 to the intersection of Alder Drive; then extending down the centerline of Alder Drive to the

intersection of Hickory Lane; at Hickory Lane extending 129 feet along the lot line abutting Alder Drive and then continuing along the rear lot lines of Map 35, Lots 5 – 10; then proceeding across the outlet stream to the Great Works River to the rear of Map 35, Lot 14; then proceeding along the rear lot lines of Map 35, Lots 14 – 40. At the northwest corner of Map 35, Lot 40 extending to the center line of Crocker Lane; then proceeding down the center line of Crocker Lane to the intersection of Agamenticus Road; then continuing in a southwesterly direction along the centerline of Agamenticus Road to a point 275 feet northeasterly from the intersection with Portland Street; then proceeding in a northerly direction along a line 275 feet southeast of and parallel to the Portland Street centerline to the northern edge of Tax Map 29, Lot 20; then along the common lot line of Tax Map 29 Lots 20 and 19 to the centerline of Portland Street; then proceeding in a northerly direction along the centerline of Portland Street to the Berwick Town line; then proceeding in a northerly then westerly direction along the Berwick Town line until the point of beginning; excepting those lands which are described in zoning districts B1 or B2.

- D. Village Residential Growth District - R1A:** All land bounded by a point beginning at a point where Old South Road intersects Route 236; then proceeding along the centerline of Route 236 to the point where the Great Works River crosses Route 236; then following the thread of the Great Works River and Leighs Mill Pond to the bridge over Vine Street; at the Vine Street Bridge proceeding along the centerline of Vine Street in a southerly direction to the intersection of Brattle Street; then proceeding along the centerline of Brattle Street to the intersection of Old South Road then following the centerline of Old South Road to the point of beginning; excepting those lands subsequently described in another zoning district.
- E. Developing Residential District - R2:** That land generally surrounding the village; more particularly that land lying to the north and east of the R1 District described above and bounded by; the thread of Lover's Brook at the Town Line; proceeding along the thread of Lover's Brook to the Great Works River; then continuing along the thread of the Great Works River to the Brattle Street Bridge; and then all land lying to the east and north of the R1 boundary described above; excepting those lands which are subsequently described in another zoning district.
- F. Suburban Growth District - R2A:** All land bounded by a point beginning at Emery's Bridge and continuing easterly along the centerline of Emery's Bridge for approximately 5,500 feet to the intersection of Witchtrot Road; then continuing down the centerline of Witchtrot Road to the intersection of Route 91; at Route 91 proceeding down the centerline to the intersection of Route 236; at Route 236 proceeding in a northerly direction for 1,500 feet to a point where Route 236 crosses the Great Works River; then proceeding upstream along the thread of the Great Works River to the point of beginning.
- G. Transitional Residential District - R3:** All land bounded by a point beginning on Knights Pond Road at the North Berwick Town Line and proceeding along the centerline of Knights Pond Road in an easterly direction to Hooper Sands Road; then proceeding along the centerline of Hooper Sands in an easterly direction to Emery's Bridge Road; then continuing north along the centerline of Emery's Bridge Road to the intersection of Belle Marsh Road; then proceeding in a southerly direction along the centerline of Belle Marsh Road to the York Town Line; then proceeding in a southwesterly direction along the York and Eliot Town

Lines to Shorey's Brook and the Salmon Falls River; thence proceeding in a northerly direction to the confluence of the Salmon Falls and Great Works River excepting those lands which are subsequently described in another zoning district.

- H. Rural Residential District - R4:** All land bounded by a point beginning on Knights Pond Road at the North Berwick Line and following the northern side for the R-3 District just described along Hooper Sands Road to the intersection of Emery's Bridge Road; at Emery's Bridge Road, extending in a northerly direction to the intersection of Belle Marsh Road whereupon the boundary shall extend 300 feet to the southeast from the centerline of Emery's Bridge Road and continue in a northerly direction to the intersection of Ogunquit Road at Ogunquit Road proceeding along the centerline in a southeasterly direction for 500 feet to the intersection of Tufts Road; then proceeding along the centerline of Tufts Road to the Wells line; then continuing in a northerly direction along the Wells Town Line to a point joining the Towns of Wells, North Berwick, and South Berwick; then proceeding in a southwesterly direction to the point of beginning; excepting those lands described in another zoning district.
- I. Agamenticus Resource District - R-5:** All land to the east of the R4 district and to the north of the R3 district and encompassed by the Wells, Ogunquit, and York Town Lines.
- J. Industrial District – I1:** On the west side of Route 236 beginning at a point where Map 6, Lot 42 intersects Route 236 then proceeding 396 feet in a westerly direction to a point where lot 40B intersects Lot 42; then continuing another 200 feet to the intersection of Lot 40B with Lot 20; then continuing in a northerly direction for approximately 680 feet along Lot 20 the right of way known as Clark's Lane; at Clark's Lane continuing in a northerly direction along an imaginary line for approximately 1,300 feet to the intersection of Map 6, Lot 17 with Lot 20; then continuing along the rear lot lines of Map 6, Lots 17, and 5 in a northerly direction for 1,300 feet to where Map 6, Lot 5 intersects with Map 7, Lot 4; at this corner following an imaginary line in a northerly direction bisecting Map 7, Lot 4 to a point on Fife's Lane 1,800 feet from the intersection of Route 236; then following the centerline of Fife's Lane to the intersection of Route 236; then following the centerline of Route 236 to the point of beginning. Also beginning at the most eastern intersection of Map 1, Lot 14B with the Eliot Town Line and continuing in a northerly direction along the common lot lone of Lot 14B and Lot 18, then turning northeasterly and continuing along the common lot line of Lot 18 and Lot 19 to a point of intersection with Map 2, Lot 6, then turning southeasterly and continuing along the common lot line of Map 1, Lot 18 and Map 2, Lot 6 to a point where Map 1, Lot 18 intersects with Map 2, Lot 6 and Lot 5 at a point on the old Shattuck Road; then continuing in a northerly direction along an imaginary line from the point just described to a point where Map 2, Lots 9, 10, and 11 intersect; then proceeding in an easterly direction for approximately 300 feet to the intersection of Lots 10 and 12A; then proceeding northerly along Lot 10A and 12A lot lines to a point where this line joins Map 2, Lot 13; then proceeding in a westerly manner along this line to a point where Lots 10 and 13 common lot line joins at the intersection of Map 7, Lots 57 and 58; then proceeding in a northerly direction for 1,400 feet to a point where Lot 57 joins Lot 53; then proceeding in a westerly direction along Lot 57 for approximately 762 feet to Map 1, Lot 27 power lines; then proceeding along the same azimuth to the centerline of Route 236; then proceeding in a southerly direction along the centerline of Route 236 to the Eliot Town Line; then proceeding in an easterly direction to the point of beginning.

- K. Central Commercial District - B1:** This district is made up of five distinct areas consisting of the following Tax Map and Lot parcels: First, Map 31, Lots 77, 77A, 78, 79 and 80; and Map 11, Lot 25. Second, Map 25, Lots 50 and 51. Third, Map 31, Lot 132 and Map 28, Lots 71 and 72. Forth, Map 30, Lots 10, 11, 12, 13, 14, 15 (only the portion of Lot 15 bounded by Main Street and Driscoll Brook,) 16, 17, 18, 19, 23, 24, 25, 26, and 27; Map 31, Lots 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 38, 39, 40, 52, 53, 54, 55, 55A, 56, 57, 58, 59, 60, 61, 62, 63, 63A; Map 28, Lots 4, 5, 6, 7, 9, 10, 10A, 12, 13, 14, 15, 18, 18A, 19, 20, 21, 22, 23, 24, 25, 37, 38, 39, 40, 41, 74, 75, 77, 78, 78A, 79, 80, 81, 82, 83, 141 (only the portion of 141 bounded by Paul Street, Main Street and a line running from the common corner of Map 28, Lot 170 and Map 28, Lot 136 northwesterly to a point 430 feet from the intersection of Main and Paul Streets,) 142, 143, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, and 173; Map 27 Lots 82 and 83. Fifth, Tax Map 20, Lots 12, 14, 15, and 17.
- L. Business and Service District - B2:** All land bounded by a point beginning at the intersection of the centerline of Main Street and Norton Street, then proceeding in a northwesterly direction along Route 236 (Main Street and Berwick Road), rear lot line of Tax Map 31, Lots 62A, 65, 66A following north along Driscoll Brook to the lot lines splitting lots 47 and 46. North on Tibbetts Street to the rear lot line of Lot 33, following in a northwesterly direction along said lot line across High Street to rear lot line of Lot 31 to intersection of Lot 31 and 32 lot lines, then turning south along Lot 32 lot line to Lot 23, then turning northwest following said lot lines with lots 23 and 32 to the Berwick Town line, to a point 43 feet before the Boston and Maine Railroad line; then proceeding in an easterly direction along the southern property line of an abandoned railroad spur to the centerline of Railroad Avenue; then proceeding along the centerline of Railroad Avenue in a southerly direction to the rear property lines of Tax Map 31, Lot 114, continuing in an easterly direction along the rear lot line of lots 114, 115, 116, 117, 118, 119, and 120. Turning in a southeast direction along center line of Ross Street to the intersection and centerline of Goodwin Street, then turning southeast and following the centerline of Goodwin Street through Norton Street intersection end at point being 275 feet from centerline of Portland Street turning southwest along side lot line of Map 28 Lot 97 following an imaginary line 275 feet from the centerline of Portland Street to the center line of Colcord Street proceeding in a northerly direction following center line of Colcord Street to the intersection of Norton Street and Colcord Street turning southwest along the center line of Norton Street to the point of beginning. Excepting those lands described in zoning district B1, specifically Map 31, Lot 132 and Map 28, Lots 71 and 72.

### **Section 140-13. Division of Lots by District Boundaries.**

- A.** Where a zoning district boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this chapter, the regulations applicable to the less-restricted portions of the lot may be extended not more than fifty (50) feet into the more restricted portion of the lot, subject to the provisions of Subsection B below. This provision shall not apply to the Resource Protection and Shoreland Floodplain and Slope Districts. **[Amended 4-11-1988]**
- B.** Extension of use otherwise requiring Site Plan Review is subject to approval of the Planning Board and in accordance with the criteria set forth in this chapter.

**Section. 140-14. Overlay Districts.**

Shoreland, Resource Protection Districts, Minor Freshwater Wetlands and Rural Overlay Districts, acts overlay districts to the other districts and add requirements to these districts.

**ARTICLE IV  
Land Use District Requirements**

**Section. 140-15. Purpose.**

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 Slope District.**
  - (1) To provide maximum protection to the land and water resources with controls of use and development of undeveloped shoreland areas.
  - (2) To minimize expenditures of public monies for flood-control projects.
  - (3) To minimize rescue and relief efforts undertaken at the expense of the general public.
  - (4) To minimize flood damage to public facilities, such as water mains, sewer lines, streets, roads and bridges.
  - (5) 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.
  - (6) To encourage open space uses, such as agriculture and recreation.
- C. Rural Overlay District – RO**
  - (1) To allow low density residential housing while retaining the rural residential character of the Town in accordance with the goals and ideals of the Comprehensive Plan, by requiring the preservation of natural buffers strips along existing and proposed roads.
- D. Agamenticus Resource District - R5**
  - (1) To protect the "Mt Agamenticus area" in accordance with the goals and principles of the Comprehensive Plan.
  - (2) To allow for low density housing, while creating a contiguous area of important natural resource systems, scenic beauty and recreational opportunity.

- (3) To minimize those uses which could prove detrimental to the environment of the Mt. Agamenticus area.

**E. Rural Residential District - R4.**

- (1) To retain the rural residential character of an area of the town by encouraging low-density uses and the maximum number of uses, consistent with controlling nuisances and unsafe and unhealthy conditions.
- (2) To provide an area where agricultural and conservation uses are encouraged.

**F. Transitional Residential District - R3.**

- (1) To provide for distributed medium-density residential development in an area where land and transportation facilities are available.
- (2) To direct growth where it can be planned for the most reasonable use of community services.

**G. Developing Residential District - R2.**

- (1) To provide areas of suburban and medium-density development in locations relatively close to the village service area, compatible with existing development.
- (2) To direct growth into areas where extension of community services is likely to become economically feasible.

**H. Suburban Growth District - R2A.** To provide an additional area for future suburban growth contingent upon the provision of water and sewer services.

**I. Village Residential District - R1.** To provide areas of medium to high-density residential development in locations compatible with existing development and in a manner appropriate to the economical provision of community services and utilities.

**J. Village Residential Growth District - R1A.** To provide an additional area for future village growth contingent upon the provision of water and sewer services.

**K. Business and Service District - B2.**

- (1) To protect residences, residential character and residential amenities.
- (2) To provide locations for business and service establishments and mixed-use properties consistent with the needs of a growing town for expanded personal and professional services.
- (3) To encourage the location of service uses along existing service corridors in a zone where lot sizes permit sufficient parking and amenities necessary for those uses.

- (4) To provide a limited area for the establishment of light industries which do not intrude on abutting properties. **[Amended 10-24-94]**

**L. Central Commercial - B1.**

- (1) To encourage the location of commercial uses on those lands within the community which are best suited for such development.
- (2) To protect the present commercial development from the blight, congestion and inconvenience caused by inappropriate and poorly located development of commercial facilities.
- (3) To avoid the economic disadvantage of providing essential services to commercial facilities which would occur if commercial facilities developed in a strip fashion along highways and major thoroughfares.
- (4) To provide areas in which the location of public facilities can serve the greatest number of people as economically as possible.
- (5) To provide areas for high-density residential development in locations compatible with existing development and in a manner appropriate to the economical provision of community services and utilities.

**M. Industrial District - I1.**

- (1) To promote the location of light industry or high-value business where services and transportation facilities presently exist or can reasonably be provided, in areas which are best suited for such development.
- (2) To prevent inappropriate juxtaposition of industrial uses and residential uses.
- (3) To provide effective sighting and controls on those uses which, by virtue of their size or external effect (noise, waste discharge, glare, fumes, dust, smoke, traffic generation and parking areas, etc.) could otherwise create nuisances or unsafe or unhealthy conditions.

**Section. 140-16. Basic Requirement.**

Permitted uses and those uses requiring Site Plan Review in all districts shall conform to all applicable specifications and requirements. A plumbing permit, building permit, occupancy permit and/or a special use permit shall be required for all buildings, uses and sanitary facilities according to the provisions of this chapter.

**Section. 140-17. Land Uses.**

Land uses permitted in each district, in conformance with the performance standards of Article V, are listed in Table A which will be considered an integral part of this chapter.

**Section. 140-18. Omitted Uses.**

Any use which is not listed as a permitted use or a use requiring Site Plan Review is prohibited.

**Section. 140-19. Dimensional Requirements.**

Lots in all districts must meet or exceed the minimum requirements outlined in Table B which will be considered an integral part of this chapter. (Additional area may be required by other provisions of this chapter.)

**Section. 140-20. Density on Division of Land. [Amended 12-12- 1988]**

The maximum net residential density (i.e., the number of dwellings per acre, excluding roads) allowable for any division of land or for construction or placement of more than one dwelling unit on a single parcel of land shall be calculated on the basis described in the table below. For example, in developments where sewer service is not being provided, all of the well-drained and moderately well-drained land may be included in the density calculations, plus one quarter of the poorly drained land. Development on divided land shall not occur in percentages greater than those listed in the table below.

**Land Which May Be Included as Suitable Land  
When Calculating Net Residential Density**

	Excessively drained, well drained & moderately well- drained (percent)	Poorly drained & somewhat poorly drained (percent)	Very poorly drained (percent)	Slopes greater than 25% (percent)
Public Sewer	100	50	0	25
No Public Sewer	100	25	0	0

**A high intensity soil survey by a licensed soil scientist may be required by the Planning Board or Code Enforcement Officer.**

**Section. 140-21. General Requirements.**

- A.** Principal building. If more than one (1) principal building is constructed on a single parcel of land, all dimensional requirements shall be met separately for each principal building.
- B.** Visibility at corner lots. All corner lots shall be kept free from visual obstruction for a distance of twenty-five (25) feet measured along the intersecting street lines.

- C. Frontage. Minimum frontage: must be on a street, an existing deeded right-of-way or a new deeded right-of-way with a minimum width of fifty (50) feet. Lots which abut a street, an existing deeded right-of-way or a new deeded right-of-way with a minimum of fifty (50) feet shall have frontage meeting the requirements of Sec. 140-19 and shall comply with Sec. 140-70.H.
- D. Mixed Use means the development of a lot, building, structure or portion thereof with two or more different uses which cannot be accurately described as principal or accessory uses because none of the uses is clearly incidental and subordinate to another, or with a single operation, enterprise or activity which combines elements of two or more different uses and cannot be accurately described by one use definition. The determination that a mixed use exists or is proposed shall be made by the Code Enforcement Officer, subject to appeal to the Board of Appeals as an administrative appeal under Section 140-76.B. Mixed uses are allowed only under the following conditions:
- (1) Each use must comply with all performance standards of this Ordinance applicable to that use.
  - (2) Where different dimensional requirements apply to the different uses, the more restrictive requirements shall apply to the entire mixed use.
  - (3) If any of the uses requires Site Plan approval, the Planning Board shall consider the impacts and effects of the entire mixed use when the Board applies the Site Plan approval criteria and when the Board determines what limiting conditions, if any, are required.
  - (4) Where there is any conflict or inconsistency between any of the standards of this Ordinance is applied to the different uses, the more restrictive standards shall govern the entire mixed use.

## **ARTICLE V**

### **I. General Performance Standards (Standards applicable to all uses)**

#### **Section. 140-22. Water Quality Protection. [Amended 4-11-1988]**

- A. No activity shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that run off, seep, percolate or wash into surface or ground waters so as to contaminate, pollute or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness or be harmful to human, animal, plant or aquatic life.
- B. All outdoor storage facilities for fuel, chemicals, chemical or industrial wastes and biodegradable raw materials shall be located on impervious pavement and shall be completely enclosed by an impervious dike which shall be high enough to contain the total volume of liquid kept within the storage area, plus the rain falling into this storage

area during a twenty-five-year storm, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area. Storage tanks for home heating oil and diesel fuel, not exceeding two hundred seventy-five (275) gallons in size, may be exempted from this requirement, in situations where neither a high seasonal water table [within fifteen (15) inches of the surface] nor rapidly permeable sandy soils are involved.

**Section. 140-23. Construction in Flood Hazard Areas.**

In areas delineated as special flood hazards on the Flood Hazard Boundary Maps prepared by the Flood Insurance Administration, all new construction, additions and modifications to existing structures shall conform to any municipal, state or federal regulations.

**Section. 140-24. Off-Street Parking and Loading (nonresidential.)**

- A.** The following standards shall apply to all new uses or establishments, to all existing uses or establishments which expand or increase their volume or intensity of usage, all uses or establishments which propose to enlarge their parking area, or any change in use which creates the need for additional parking as based on the table below.
- B.** Parking spaces will be laid out in accordance with Architectural Graphic Standards (8th Edition.) Parking areas will be so arranged that it is unnecessary for vehicles to back into the street.
- C.** Within all districts with the exception of the Industrial District, parking is required to be located to the side or rear of the building. Parking may be placed in the front of the building if such placement will create a better traffic flow, will not detract from the neighborhood environment, or due to topography and other site considerations parking can not be reasonably placed to the side or rear of the building. In no case shall the parking and drives cover more than thirty (30%) of the front yard.
- D.** No off-street parking area shall have more than two (2) openings onto the same street, each opening not to exceed twenty four (24) feet in width. Openings shall be set a reasonable and safe distance apart. Parking and access/egress within the Industrial District is governed by the standards within Section 140-44.
- E.** The number of parking spaces required for various types of commercial and industrial establishments is listed in Subsection H on next page.
- F.** All driveway entrances and exits shall be approved by the Road Commissioner.
- G.** Loading facilities shall be located entirely on the same lot as the building or use to be served so that trucks, trailers and containers shall not be located for loading or storage upon any town way.

**H.**

**TABLE OF MINIMUM REQUIRED PARKING.**

<b>ACTIVITY</b>	<b>MINIMUM REQUIRED PARKING</b>
Auto Service Station or repair garage	1 space/1000 sq. ft. lot area
Bank	1 space/150 sq. ft. floor area
Barber/Beauty Shop	4 spaces/chair
Building Material Storage and Sales Facility	2 spaces/employee
Child Care Facility	1 space/4 children
Church	1 space/3 seats
Commercial Recreation Facility	1 space/100 sq. ft. floor area
Commercial School (dancing art, & ceramics)	1 space/50 sq. ft. floor area
Convalescent/Nursing Home	1 space/2 beds
Funeral Parlor	1 space/50 sq. ft. floor area
Hospital	1 space/2 beds
Hotel, Motel, Inn	1 space/sleeping room
Kennel	1 space/200 sq. ft. floor area
Library, Museum, Art Gallery, Studio	1 space/100 sq. ft. floor area
Manufacturing Plant	1 space/1.5 employees based on largest shift
Membership Club	3 spaces/100 sq. ft. floor area
Mixed Use	Total of Individual Uses
Neighborhood Commercial	1 space/200 sq. ft. floor area
School	1 space/15 classroom seats
Photo/Testing Laboratory	1 space/300 sq. ft. floor area
Amusement Center	1 space/3 amusement devices
Medical Offices	1 space/300 sq. ft. net floor area
Other Professional Offices	1 space/250 sq. ft. net floor area
Repair Establishments (appliance, tool, small engine)	1 space/150 sq. ft. floor area
Restaurant and Take-Out Restaurant	1 space/3 seating capacity
Retail Store (except neighborhood commercial)	1 space/300 sq. ft. floor area
Theatre (indoor)	1 space/3 seating capacity
Veterinarian Clinic, Animal Hospital	5 spaces/veterinarian
Warehouse	1 space/500 sq. ft. floor area

**NOTE:** Where floor space is to be used in calculating the number of required parking stalls, gross floor space shall be used unless otherwise noted.

- I. Parking Standards for non-residential uses. Off- street parking and loading spaces for nonresidential uses, where not enclosed within a building, shall be effectively screened along exterior lot lines adjoining all residential and institutional uses by a continuous landscaped area not less than six (6) feet in width containing evergreen shrubs, trees, ornamental fences, walls or any combination thereof, forming a visual break not less than six (6) feet in height along exterior lot lines adjoining all residential properties, except to provide visibility for vehicles entering and leaving. Native and indigenous trees and shrubs shall be planted whenever possible.

The interior parking area shall be generously planted with shade trees. A minimum of ten (10%) percent of the parking area shall be landscaped with trees and landscaped islands. The Planning Board may require such plan be developed by a licensed landscape architect. If parking is to be placed in front of the building the Board may require the placement of additional trees and landscaped islands. Where shade trees currently exist within a proposed parking area these should be preserved to the maximum extent in accordance with the standards above.

The Board may require the planting of street trees or the placement of a berm to more effectively buffer the site.

- J. All other zoning districts. The standards of Section 140-24, A-I, above, shall apply to all off- street parking and loading for non-residential uses in other zoning districts except as noted. In addition, no off-street parking and loading shall be permitted within the front setback or any setback adjoining a public street.

- K. Where a new use or expanded use in an existing building cannot meet the above parking standards, the Planning Board may, following a Minor Site Plan Review, in accordance with this chapter, waive the above requirements.

The joint use of a parking facility by two or more principal buildings may also be approved following a Minor Site Plan Review where:

- (1) It is demonstrated that the total spaces provided by the facility are not less than the sum of the spaces required for each use individually; or
- (2) It can be clearly demonstrated to the Board that the proposed facility would substantially meet the intent of this section by reason of the variation in peak hour usage.

**Section. 140-25. Off-street Parking (residential.)**

- A. Single-family and two-family dwellings shall be provided with two (2) off-street parking spaces per dwelling unit.
- B. Multifamily dwellings shall meet the following standards.
  - (1) The design, layout, size, area, construction, screening and landscaping standards of Section 140-24.I, shall be met.
  - (2) Parking spaces shall be provided to conform to the number required in the following schedule:

**OFF STREET PARKING RESIDENTIAL**

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TYPE	NUMBER OF SPACES PER UNIT
1 bedroom unit	1.5
2 or more bedroom units	2
Restricted to the elderly	1

- C. Where a new use or expanded use in an existing building cannot meet the above parking standards, the Planning Board may, following a Minor Site Plan Review, in accordance with this chapter, waive the above requirements.

**Section. 140-26. Signs.**

- A. The following provisions shall apply to signs in all zoning districts:

- (1) No sign shall be erected adjacent to any public way in such a manner as to obstruct clear and free vision or where, by reason of its position, shape, color, illumination or wording, the sign may interfere with, obstruct the view of or be confused with any authorized sign, signal or device or otherwise constitute a hazard to pedestrian or vehicular traffic.
- (2) Flashing, moving roof-mounted and animated signs are prohibited.
- (3) No sign shall be located within ten (10) feet of a street line or other lot line except in the B1 District where no setback shall apply.
- (4) All signs shall relate to goods and services available on the premises on which the sign is located.

- B. The following provisions apply to signs proposed in the residential zoning districts:

- (1) No sign or portion of a sign structure shall exceed eight (8) feet in height measured from the adjacent road surface.
- (2) Only one free standing sign, no larger than six (6) square feet in area on each side shall be erected per building. Only one wall sign, not exceeding eight (8) square feet in area and no higher than the peak of the roof is permitted in addition to the freestanding sign.

- C. For all commercial uses in the B1 and B2 districts a sign or signs may be erected in accordance with the following:

- (1) Internally lit signs are prohibited. Signs shall be illuminated only with steady, stationary shielded light sources directed solely onto the sign without causing glare.

- (2) One freestanding sign up to twelve (12) feet in height and twelve (12) feet in area as measured on one display side; or one (1) projecting sign projecting not more than five (5) feet from the wall up to ten (10) square feet in size as measured on one display side, plus one of the following;

- (a) one wall sign mounted flush on the wall up to eight (8) square feet; or

- (b) one wall sign (when part of the architectural design of the building) consisting of individual letters or symbols not to exceed fifteen (15) percent of the wall area; or

- (c) one window sign consisting of individual letters or symbols not to exceed thirty (30%) percent of the total glass area of the building front.

**D.** In addition, signs in the all districts are subject to the following provisions:

- (1) Where a wall sign is part of the architectural design of a building, the area of the sign shall be considered to be that of the smallest rectangle or other regular geometric shape which encompasses all of the letters or symbols.

- (2) All wall signs must be located below the cornice line or second story window sill, whichever is lower.

- (3) Where a number of signs are proposed as part of a unified complex the maximum sign area permitted is eighteen (18) square feet for the sign bearing the name of the building or complex and two (2) square feet for the name of each business located there. If a complex has over three hundred (300) feet of frontage it will be allowed two free standing signs.

- (4) The following signs are exempt from the above provisions: memorial tablets, public notices, public safety signs, on premise real estate signs, flags and insignia except when displayed in connection with a commercial promotion, religious symbols or insignia, historical plaques, house numbers, political signs, motor vehicle signs requiring Maine DOT approval in accordance with the Maine Travelers Information Service Act, temporary (30 days or less) banners, signs on vending machines or newspaper racks and interior signs.

**E.** For retail or commercial uses in the Industrial Zone one (1) freestanding sign or monument sign up to sixty four (64) square feet is allowed for each street frontage.

#### **Section. 140-27. Glare.**

Lighting may be used which serves security, safety and operational need but which does not directly or indirectly produce a deleterious effect on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or pedestrians or residents from adjacent dwellings.

**Section. 140-28. Noise.**

- A. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced on an industrial property when measured four (4) feet above the ground at the property boundary, shall not exceed the following limits:

SOUND PRESSURE LEVEL LIMITS MEASURED IN dB(A)'s		
	7:00 AM to 10:00 PM	10:00 PM to 7:00 AM
Industrial property abutting industrial property	65	60
Industrial property abutting all other properties	55	45

- B. The levels specified may be exceeded by ten (10) dBA for a single fifteen-minute period per day. Noise shall be measured by a meter set on the A-weighted response scale, slow response. The meter shall meet the American National Standards Institute (ANSI S1.4-1971) American Standard Specification for General Purpose Sound Level Meters.
- C. No construction activities shall take place on an industrial property between the hours of 10:00 p.m. and 7:00 a.m., which exceed those limits established above. Otherwise the following activities shall be exempt from these regulations:
- (1) Sounds emanating from construction activities between 7:00 a.m. and 10:00 p.m.
  - (2) Sounds emanating from safety signals, warning devices and emergency pressure relief valves and any other emergency activity.
  - (3) Sounds emanating from traffic or public transportation facilities.

**Section. 140-29. Stormwater Management.**

- A. All new construction and development, whether or not served by a stormwater collection and transportation system, shall be designed to reflect or resemble, as nearly as possible, natural runoff conditions in terms of quantity, quality, velocity and location. If runoff after development would exceed predevelopment natural runoff conditions, the off-site impact must be evaluated in terms of potential soil erosion and sedimentation, drainage capacity and land use/land cover characteristics. Appropriate methods of reducing off-site impact shall be employed. Stormwater management evaluations and designs shall be based on a twenty- four hour, twenty-five year recurrence interval storm.

**B.** All development plans shall define maintenance requirements and identify parties responsible for maintenance of the stormwater control system. When methods of reducing stormwater impact are necessary or desirable, stormwater runoff control plans shall include:

- (1)** Control methods effective both during and after construction.
- (2)** Control methods compatible with upstream and downstream characteristics.
- (3)** Documentation by the designer that increasing the volume and rate of runoff from the proposed development will not aggravate conditions downstream or upstream.
- (4)** Provisions for on-site storage and gradual discharge of excessive flows or contribution toward increasing downstream capacity (e.g., by enlarging existing culverts,) when the channel downstream is not able to accommodate the increased volume or rate of runoff created by the proposed development.
- (5)** Consideration of the following factors:
  - (a)** Impact on on-site, downstream, upstream and basin-wide.
  - (b)** Costs: initial, amortized, operation and maintenance.
  - (c)** Intensity of rainfall.
  - (d)** Timing of rainfall (e.g., falling of snow or during the spring melt.)
  - (e)** Amount of precipitation in the basin during the five (5) days preceding the storm in question.
  - (f)** Hydrologic soil groups throughout the basin (i.e., the soil's rate of water infiltration and transmission.)
  - (g)** Hydrologic conditions throughout the basin (soil's moisture content humus/organic content, temperature and whether or not it is frozen.)
  - (h)** Vegetative cover throughout the basin (vegetation helps soil dry out after a rainfall, intercepts some precipitation during the rainfall and slows down the flow of water over the land.)
  - (i)** Area of land covered by impervious surfaces throughout the basin (roads, sidewalks, roofs, driveways, patios, etc.)
  - (j)** Topography throughout the basin (slopes affect the rate of runoff; marshland reduces peak discharge rate by slowing down the rate of runoff.)
  - (k)** Size and shape of watershed (peak discharge rates are slower in long, narrow watersheds.)

- C. Stormwater runoff systems should be designed to facilitate aquifer recharge when it is advantageous to compensate for groundwater withdrawals. Conversely, designs should avoid recharge where groundwater effects might be harmful. Design of permanent storage facilities should consider the safety, appearance, recreational use and cost effectiveness of maintenance operations, in addition to the primary storage function. Natural overland flows and open drainage channel and swale locations should be the preferred alignments for major components, such as underground piping, should be minimized where the existing natural systems are able to accommodate storm runoff. Energy dissipaters (to reduce high flow velocities) and other forms of outfall protection shall be employed where enclosed drains discharge onto erodable soils.

**Section. 140-30. Traffic.**

- A. The proposed development shall provide for safe access to and from public and private roads. Safe access shall be assured by providing an adequate number and location of access points, with respect to sight distances, intersection, schools and other traffic generators. Curb cuts shall be limited to the maximum width necessary for safe entering and exiting. The proposed development shall not have an unreasonable negative impact on the town road system and shall assure safe interior circulation within its site by separating pedestrian and vehicular traffic and providing parking and loading areas. All exit driveways shall be designed according to the following standards of safe sight distance.

<b>SIGHT DISTANCES</b>		
<b>Posted speed limit (MPH)</b>	<b>Recommended (Feet)</b>	<b>Minimum (Feet)</b>
25	250	175
30	300	210
35	350	245
40	400	280
45	450	315
50	500	350
55	550	385

- B. This section shall not be used as the sole criterion for rejecting an application, unless all possible entrance/exits are deemed to be unsafe due to poor sight distances.

**Section. 140-31. Air Emissions. [Amended 4-11-1988]**

No emission of dust, ash, smoke or other particulate matter which can cause damage to human or animal health, vegetation or property by reason of concentration or toxicity or which can cause soiling beyond the property boundaries is permitted which is composed of solid or liquid particles in concentrations exceeding three-tenths (0.3) grain per cubic foot of the conveying gas or air at the point of emission from a chimney stack. The emission of non farming, odorous matter in such quantities, as determined by the Code Enforcement Officer, to be offensive at the lot boundaries is prohibited. As a guide for determining quantities of offensive odors the Code Enforcement Officer shall refer to the smallest values in Table III of Chapter 5 of the Air Pollution Abatement Manual by the Manufacturing Chemists' Association, Inc.

**Section. 140-32. Buffer Areas. [Amended 4-11-1988; 11-27-1989]**

No industrial or commercial buildings or uses shall be established in or abut a residential district or use unless a landscaped buffer strip is provided to visually screen the uses. Where no natural vegetation can be maintained or due to varying site conditions, the landscaping may consist of fences, walls, trees, plantings, hedges or combinations thereof at least six (6) feet in height and for landscaped areas six (6) feet in width. The buffering shall be sufficient to minimize the impacts of any kind of potential use, such as loading and unloading operations, outdoor storage areas, vehicle parking, mineral extraction, waste collection and disposal areas. Where a potential safety hazard to small children would exist, physical screening/barriers shall be used to deter entry to such premises. The buffer areas shall be maintained and vegetation replaced to ensure continuous year-round screening.

**Section. 140-33. Explosive Materials. [Amended 4-11-1988]**

No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line or forty (40) feet for underground storage.

**Section. 140-34. Refuse Disposal. [Amended 4-11-1988]**

The applicant shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. The Planning Board shall consider the impact of particular industrial or chemical wastes or by-products upon the town's facilities, in terms of volume, flammability or toxicity, and may require the applicant to dispose of such wastes elsewhere, in conformance with all applicable state and federal regulations. The Board shall require the applicant to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation.

**Section. 140-35. Industrial/Commercial Sewage Disposal. [Amended 4-11-1988]**

- A.** Industrial or commercial wastewaters may be discharged to municipal sewers only in such quantities and/or of such quality as to be compatible with commonly accepted municipal sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to municipal treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The Planning Board may require regular periodic testing procedures for liquid wastes. Chemical testing shall be performed by a certified testing lab. The costs of any tests will be the responsibility of the business generating the wastes.
- B.** The disposal of industrial or commercial wastewaters by means other than the municipal sewage system must comply with the laws of the State of Maine concerning water pollution. Wash water or other mineral matter will not be accepted into the municipal system.
- C.** Prohibited wastes. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sanitary sewers or, except as set forth in Subsection C(1) below, to any storm drains or any part thereof:
- (1)** Water from roof downspouts, foundation drains or areaway drains or any other sources of surface runoff or groundwater, nor discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial or commercial process waters, except into storm drains.
  - (2)** Any gasoline, benzene, naphtha, fuel, oil or other flammable or explosive liquid, solid or gas.
  - (3)** Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, as determined by the Sewer District, either singularly or by interaction with other wastes, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in the receiving waters of any wastewater treatment plant now or in the future to be treating wastewater from the city, including but not limited to those defined in standards issued from time to time under Section 307(a) of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.
  - (4)** Solid or viscous substances in quantities or of such size capable or causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater works, such as but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, including disposable diapers, wood, un-ground garbage, any whole or ground seafood shells, whole blood, paunch manure, hair and fleshing, entrails, and paper dishes, cups, milk containers, etc., either whole or ground.

- (5) In the case of a major contributing industry containing an incompatible pollutant in an amount of concentration in excess of that allowed under standards or guidelines issued from time to time pursuant to sections 304, 306 and/or 307 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.

**D. Sewer District Prohibitions.** The Sewer District may prohibit the discharge of the following wastes if any discharge is, in its opinion, of sufficient quantity to create a hazard, public nuisance or deleterious effect upon receiving waters or the waste treatment facilities:

- (1) Any hexavalent chromium, aluminum, iron, tin, fluorides, arsenic phenols, chlorides or sulfates. In addition those metals specified in (4 CFR 433.17) shall not exceed the concentration therein listed.

METAL	MAX. FOR ANY 1 DAY (milligrams per liter)	AVG. OF DAILY VALUES FOR 30 CONSECUTIVE DAYS (shall not exceed)
CADMIUM	0.064	0.016
CHROMIUM	2.87	0.8
COPPER	3.72	1.09
LEAD	0.67	0.23
MERCURY	0	0
NICKEL	3.51	1.26
SILVER	0.44	0.13
ZINC	0	0

- (2) Any reducing substances having immediate chlorine demand exceeding thirty and zero-tenths (30.0) milligrams per liter.
- (3) Any radioactive wastes greater than allowable releases as specified by current United States Bureau of Standards handbooks dealing with the handling and release of radioactivity.
- (4) Any waters or wastes containing any combination of solids, liquids or gases listed in this section but at concentrations not prohibited when such commingled water or wastes shall yield a concentration of contamination which the Sewer District deems detrimental to the waste water treatment processes.
- (5) Any waters or wastes which cause corrosive structural damage to the sewers or treatment works, including but not limited to any waste having a concentration of caustic alkalinity exceeding one thousand (1,000) milligrams per liter of all wastes with a pH lower than five point zero (5.0.)
- (6) Any liquid or vapor other than water having a temperature higher than one hundred fifty degrees Fahrenheit (150° F) , sixty five degrees (65°) Celsius.

- (7) Any waters or wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty two degrees and one hundred fifty degrees Fahrenheit (32° and 150°) (zero degrees and sixty five degrees Celsius.)
  - (8) Any waters or wastes containing suspended solids exceeding a concentration of four hundred (400) milligrams per liter or dissolved solids of such character and quantity that unusual attention or expense is required to handle such materials at the wastewater treatment plant or in the public wastewater works.
  - (9) Any waters or wastes having any color which is not removable in the existing wastewater treatment plant processes.
  - (10) Any waters or wastes having an average BOD in excess of four hundred (400) milligrams per liter
  - (11) Any waters or wastes having an average COD in excess of six hundred (600) milligrams per liter.
- E.** Discharge of prohibited waste. If any waters or wastes are discharged or are proposed to be discharged to the public sewer, which waters or wastes contain any of the substances or possess the characteristics listed in subsections C or D, the Sewer District may:
- (1) Reject the wastes; or
  - (2) Require the pretreatment to an acceptable condition for discharge to the public sewer;
  - (3) Require control over the quantities and rates of discharge (flow equalization); and/or
  - (4) Require payment to cover the added cost of handling and treating the wastes.

**Section. 140-36. Soil Erosion Control. [Amended 4-11-1988]**

Erosion of soil and sedimentation of watercourses and water bodies shall be minimized by the following erosion control management practices.

- A.** The stripping of vegetation, removal of soil, re-grading or other development of the site shall be accomplished by limiting the duration of exposure and area of the site to be disturbed. Dust control methods shall be employed during dry conditions.
- B.** Temporary vegetation, mulching and/or silt ration fabrics shall be used to protect critical areas during the development. Sedimentation of runoff waters shall be trapped by debris basins, silt traps, sediment basins or other methods determined acceptable by the Town.

- C. Permanent vegetation and/or other erosion control measures should be installed prior to completion of the construction, but no later than six (6) months after completion of the construction.
- D. The top or bottom of a cut or fill shall not be closer than ten (10) feet to an adjoining property unless otherwise mutually agreed to by the affected landowner and Town, but in no instance shall said cut or fill exceed a three-to-one slope.

**Section. 140-37. Storage. [Amended 4-11-1988; 11-27-1989]**

All materials stored outdoors shall be stored in such a manner as to prevent the breeding and harboring of insects, rats or other vermin. This shall be accomplished by enclosures in containers, raising materials above ground, separation of material, prevention of stagnant water, extermination procedures or other means. Exposed storage areas for machinery, raw materials or finished products or mineral excavation and processing operations shall meet the minimum setback for the district in which the use is located and screening (as outlined in Sec. 140-32, Buffer areas) sufficient to provide a visual buffer to minimize their adverse impact on abutting land uses. Where a potential safety hazard to small children would likely arise, physical screening to prevent access shall be provided. The permanent outdoor storage of items for sale such as building materials, trees/shrubs and automobiles shall also meet the provisions of Section 140-32, Buffer areas.

**Section. 140-38. Toxic and Noxious Discharges. [Amended 4-11- 1988]**

No use shall, for any period of time, discharge across the boundaries of the lot wherein it is located toxic and noxious matter in concentrations in excess of one-fourth (1/4) of the maximum allowable concentration set forth in Table I of the Industrial Hygiene Standards, Maximum Allowable Concentration, Chapter 5 of the Air Pollution Abatement Manual, copyright 1951, by Manufacturing Chemists' Association, Inc., Washington, D.C., as subsequently amended or revised, which is hereby incorporated in and made part of this section by reference.

**Section. 140-39. Vibration. [Amended 4-11-1988]**

Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries.

**Section. 140-40. Water Supplies. [Amended 4-11-1988]**

All uses must connect to the South Berwick Water District system when service can be extended to satisfy the daily consumption demands and fire protection needs required for the development or facility. Wherever the development cannot be adequately serviced by the South Berwick Water District, evidence of the estimated quantity of groundwater or surface water to be taken or used shall not substantially lower the ground water table or surface water levels; cause adverse changes in groundwater flow patterns; or cause ground subsidence.

## **Section. 140-41. Soils.**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal and commercial or industrial development and other similar intensive land uses shall require a soils report, prepared by a state-certified soil scientist or geologist based on an on-site investigation. Suitability considerations shall be based primarily on criteria employed in the National Cooperative Soil Survey as modified by on-site factors, such as depth to the water table and depth to refusal.

## **II. Performance Standards for Specific Uses**

### **Section. 140-42. Campgrounds.**

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

- A.** Recreational vehicle and tenting areas shall contain approved water-carried sewage facilities and shall meet the following criteria:
  - (1)** Each recreational vehicle, tent or shelter site shall contain a minimum of three thousand (3,000) square feet of suitable land, not including roads and driveways for each site, except it shall be five thousand (5,000) square feet when within two hundred fifty (250) feet of the normal high-water mark of water bodies referred to in Sec. 140-12A and B. **[Amended 4-11-1988]**
  - (2)** Each recreational vehicle, tent or shelter site shall be provided with a picnic table, trash receptacle and fireplace.
- B.** The area intended for placement of the recreational vehicle, tent or shelter and utility and service buildings shall be set back a minimum of one hundred (100) feet from the exterior lot lines of the camping area.
- C.** All campgrounds shall be screened from adjacent land areas by a continuous landscaped area not less than twenty-four (24) feet in width containing evergreen shrubs, trees, fences, walls or any combination which forms an effective visual barrier of not less than six (6) feet in height. **[Amended 1-11-1988]**
- D.** Roads, parking, campsites and required facilities shall be planned and shall be shown on the proposed plan which is submitted for review and approval as a Site Plan Review.
- E.** A soil erosion and sedimentation control plan meeting the standards of the York County Soil and Water Conservation District or the Maine Soil and Water Conservation Commission shall be submitted. In addition to data soils, slopes and drainage, a vegetation map showing the following items may be required:
  - (1)** The major types of vegetation should be identified and described (as to age, height, openness or density and pattern, either natural or reforested).

- (2) New planting should be selected to provide screening and shelter, to tolerate existing and proposed site conditions and to blend compatibly with existing natural vegetation.
- (3) All vegetative clearing should avoid creating straight-line edges between open lands and surviving stands.
- (4) Areas of activity and/or traffic should be sited so as to avoid wildlife areas, such as thickets for birds and small mammals or deer yards and trails.

#### **Section. 140-43. Home Occupations.**

**A. Minor Home Occupations** - A minor home occupation shall meet all of the following standards:

- (1) A minor home occupation shall be carried on wholly within the principal building or within a building or other structure accessory to it and shall utilize, at a maximum, no more than 500 square feet or 25% of the gross floor area of the principal building, whichever is less.
- (2) A minor home occupation shall not include the employment of any persons not residing on the premises in the performance of the occupation.
- (3) There shall be no outdoor storage of materials or products on the premises.
- (4) There shall be no on premises retail sales.
- (5) No nuisance such as waste discharge, offensive noise, vibration, smoke, dust, odors, heat or radiation shall be generated.
- (6) No traffic shall be generated by a minor home occupation in greater volumes than would normally be expected by a residential use.
- (7) There shall be no exterior signage and no other on-site advertising from the exterior shall be displayed.

**B. Major Home Occupations**

- (1) A major home occupation shall be carried on wholly within the principal building or within a building or other structure accessory to it and shall utilize more than 500 square feet or 25% of the gross floor area of the principal building, whichever is less.
- (2) No more than two (2) persons outside of the people residing at that residence shall be employed in the home occupation.
- (3) Exterior storage of materials and any other exterior evidence of the home occupation shall be so located or screened, so as to not detract from the residential character of the principal building and neighborhood.

- (4) No nuisance such as waste discharge, offensive noise, vibration, smoke, dust, odors, heat, glare, traffic or radiation shall be generated.
- (5) Signs for major home occupations shall be limited to one sign, no larger than two square feet on each side of the sign.
- (6) No goods shall be sold which have not been made or substantially altered on the premises and/or accessory to services on the premises except for those which are customarily incidental to the service rendered by the home occupation (e.g. hair spray being sold by a hairdresser).
- (7) There is sufficient off-street parking on the premises for the customers, clients and employees use.
- (8) There is no objectionable increase in commercial vehicle traffic over that traffic normal for the neighborhood.

#### **Section 140-44. Light Industry**

- A.** In addition to the applicable performance standards found elsewhere in this ordinance Light Industrial uses in the B2 zone shall comply with the following. In the event these standards conflict with other standards in the ordinance, the more stringent standards shall apply.
- (1) When submitting an application for Site Plan Review for a light industrial facility the applicant shall submit the information required under Section 140-44.A. (1)-(6.)
  - (2) The applicant shall meet the noise standards set forth in Section 140-28 for Industrial Property abutting all other properties.
  - (3) All operations, activities and storage shall be conducted within a completely enclosed building, except for those uses for which exposure to sunlight is required.
  - (4) The emission of gray smoke at a density greater than number 1, on the Ringlemann Chart published by the United States Department of the Interior, Bureau of Mines Information Circular 8333, May 1967, shall not be permitted.
  - (5) Based on the type of use and impact on neighboring areas The Planning Board may restrict the number of shifts and / or the hours of operation.
  - (6) No use shall emit across the lot lines odor in such quantity as to be readily detectable at any point along the lot lines.

**B.** General requirements for non-residential uses in the Industrial Zone.

- (1) Except for clearing necessary to provide utilities and access to the site, no clearing shall be permitted within fifty (50) feet of the dedicated right-of-way of the public road. In cases where the buffer area has previously been substantially disturbed it shall be re-vegetated with native trees, shrubs and grasses as determined by a licensed landscape architect.
- (2) Along all property lines abutting a residential zone, setbacks shall be left in their existing vegetated state. If the existing vegetation is not sufficient to provide a buffer, as determined by the Planning Board, a mix of fencing, vegetation, berms and screens may be required within the setback area to provide the necessary buffer.
- (3) All manufacturing, repair and processing operations on property abutting or facing a residential use or property shall be conducted wholly within an enclosed building.
- (4) In order to limit the number of access points onto Route 236 the following restrictions shall apply:

  - (a) Access to Route 236 shall be limited to one driveway unless the estimated daily traffic volume for the single drive exceeds 1,500 vehicles per day or a traffic analysis demonstrates the need for an additional entrance/exit.
  - (b) No driveway accessing Route 236 shall be closer than three hundred (300) feet from the nearest adjacent driveway unless no other access is feasible.
  - (c) The Planning Board may require a joint use access easement or driveway. For the purposes of this section a joint use driveway means a driveway located entirely or partially on one tract of land which is available for use as access to and from Route 236 from an adjoining tract of land. Such an easement may run generally parallel to Route 236 for use by adjacent property owners with insufficient frontage and/or to reduce the number of driveway entrances onto Route 236. Such a determination shall be made by the Planning Board at the time of application.
- (5) Off - street parking requirements as stated in Sec. 140-24 must be met except parking may be permitted in front of the building but in no case shall be permitted within the front setback area.
- (6) Signs are restricted to the following:

  - (a) One (1) freestanding berm or monument sign of up to sixty four (64) square feet in area shall be permitted for each street frontage. Where street frontage exceeds six hundred (600) feet, two such signs shall be permitted. Such signs shall not exceed twelve (12) feet in height.

- (b) Each business is entitled to signage on the front wall of its building or on any side wall which faces a public street. The sign on the wall may occupy thirty (30) per cent of the signable area. No wall sign shall extend above the peak of the roof.
  - (c) Internal or external lighting of signs is permitted but neon, flashing, moving, or animated signs are not permitted. All spotlights and exterior lighting of signs shall be concealed from view and oriented away from adjacent roadways and properties.
- (7) All other general performance standards applicable to the proposed use shall be met.

**Section. 140-45. Manufactured Housing and Mobile Home Parks.**

- A. Manufactured housing not in a mobile home park shall meet all of the dimensional requirements of this chapter. In addition:
- (1) Manufactured housing will be installed in accordance with the Manufactured Home Installation Standard dated March 1, 1993 and published by the State of Maine Manufactured Housing Board.
  - (2) The following additional requirements for installation of Manufactured Housing will apply:
    - (a) All Manufactured Housing installed in South Berwick will include an anchoring system properly designed and constructed to resist sliding and overturning of the home.
    - (b) All Manufactured Housing will be equipped with skirting with an exterior covering consistent with the houses typical siding materials down to normal foundation level and consistent with typical foundation or siding materials below the normal foundation level. **[Adopted 5-28-96]**
  - (3) Manufactured housing not in compliance with the requirements of this Subsection A or with the requirements for a single-family dwelling may be occupied temporarily, under the following conditions:
    - (a) The applicant can demonstrate intent to construct a permanent residence by presenting building plans, cost estimates on materials and/or services, financial commitment or the like.
    - (b) Construction is complete within one (1) year. A one-year extension may be granted by the Code Enforcement Officer if the applicant can show continued good faith in completing the residence.
    - (c) The manufactured home is removed from the premises within sixty (60) days of the applicant's occupancy of the residence.

(d) Failure of applicant to occupy residence within two (2) years shall constitute a violation of this chapter.

(e) The Code Enforcement Officer will approve these uses by applying the procedures outlined in Section 140-70, Building Permits.

(4) No mobile home may be sited in the town that has not been built in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974. The applicant must present evidence that these standards have been met. If the applicant is unsure that these standards have been met in the construction of the manufactured home, then the applicant must provide certification that the plumbing, electrical and heating standards meet all current standards. These certifications must come from tradespersons licensed to do business in the State of Maine. **[Amended 12-12-1988]**

(5) Prior to the issuance of a building permit for a new manufactured home, the applicant must furnish evidence to the Code Enforcement Officer that all State of Maine sales tax has been paid. **[Added 12-12-1988]**

**B.** Mobile home parks. Mobile home parks shall meet the maximum state requirements for mobile home parks and all of the standards and procedures of Section 140-47, Planned residential and cluster development, including modular and industrial housing, which are not inconsistent with state standards. Mobile home parks will be reviewed under the provisions of the Town of South Berwick Subdivision Ordinance. **[Amended 12-12-1988; 1-8-1990]**

**Section. 140-46. Two-Family and Multifamily Dwellings.**

**A.** New construction. New two-family and multifamily dwellings shall meet all of the following criteria:

(1) The lot area shall be equal to that required for the equivalent number of single-family dwelling units.

(2) The minimum road and shoreland frontage shall be as indicated in the chart below: **[Amended 4-11-1988]**

**MINIMUM ROAD AND SHORELAND FRONTAGE**

# of Units	R3, R4, R5		R1, R2, B2		B1	
	Road	Shore	Road	Shore	Road	Shore
2	300	400	150	400	none	200
3	400	600	200	600	none	300
4	450	800	250	800	none	400
5	500	1,000	275	1,000	none	500
6	550	1,200	300	1,200	none	600

- (3) Lots for two-family and multifamily dwelling units shall meet all other dimensional requirements for single-family dwellings, except road frontage. **[Amended 4-11-1988]**
- (4) No parking area shall be located within the required yard area setbacks except in the B1 District. Parking area design and the number of parking spaces shall be in compliance with Section 140-25 of this chapter.
- (5) All dwelling units in a multifamily building shall have a minimum net habitable floor area of six hundred (600) square feet, exclusive of balconies, stairways, hallways or other common space.
- (6) No new multifamily dwellings shall contain more than six (6) units. **[Added 4-24-1989]** This limitation shall not apply to the conversion of a building existing on February 25, 1999 to multi-family use in the B1 District. **[Added by amendment January 25, 1999]**

#### **Section 140-46.1 Accessory Apartments.**

The Planning Board may approve, after a Minor Site Plan review, the addition of one (1) dwelling unit to an existing single family dwelling which is unable to comply with the dimensional standards of this ordinance. The use must comply with the following standards:

- A. The existing dwelling unit must have a minimum of two thousand (2,000) gross square footage of living area (cellars are not to be included in such calculation) to be considered for an accessory apartment. The accessory apartment shall not exceed thirty (30%) of the total living area of the building.
- B. Either the principal or accessory unit shall be owner occupied. Under this section, owner occupied means that either the principal dwelling unit or the accessory apartment is occupied by a person who has a possessor interest in the real estate, who bears all or part of the economic risk of decline in the value of the real estate and who receives all or part of the re-numeration, if any, derived from the lease or rental of the other dwelling unit.
- C. A single family dwelling as contained in this section means the building proposed for conversion and any accessory building attached as of the effective date of this ordinance. Only one accessory apartment shall be permitted per lot.
- D. There will be no external expansion of the structure, except for stairwells and elevators.
- E. The dimensional standards found in Table B are waived with the exception of the standards for lot coverage, residential, which can not be increased above set standards or that which exists at the time of the proposed conversion, whichever is greater.
- F. The development must meet the shoreline frontage requirements outlined in subsection A (2) above.

- G. Any request for an accessory apartment shall conform to all provisions of the Maine State Plumbing Code and no dwelling that is served by an on-site wastewater disposal system shall be modified to create an accessory apartment until a site evaluation has been conducted by a licensed soil evaluator which demonstrates that a new system can be installed to meet the disposal needs of the dwelling units or the existing system has adequate capacity for the proposed use.
- H. This provision shall not prohibit the conversion of a single family dwelling to a multiplex dwelling or the conversion of a duplex dwelling to a multiplex dwelling so long as said conversion complies with all district and zoning standards, including but not limited to dimensional requirements.
- I. When a dwelling which contains an approved accessory apartment is vacated by the owner, the owner shall notify the Code Enforcement Officer within 60 days. The Code Enforcement Officer shall then, in writing, either reconfirm or void the Site Plan permit for the accessory apartment. A reconfirmation shall determine that the apartment conforms to the area specifications of the original approval that all standards of this section are being met and that currently prevailing health and safety requirements for apartments are also being met. In the absence of a reconfirmation the Site Plan approval is void.
- J. Whenever the Planning Board approves an accessory apartment pursuant to this Section 140-46.1, the Board shall prepare a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, indicating that the Board has approved the addition of one accessory apartment to a single family dwelling and the date of such approval, setting forth the requirements of Section 140- 46.1 of this Ordinance and containing a notice that the approval will become void if the property ceases to comply with those requirements. The property owner shall cause the certificate to be recorded in the York County Registry of Deeds within ninety (90) days of the date of Planning Board approval, or the approval shall be invalid.

**Section 140-47. Planned Residential Development, Cluster Development (including modular and industrial housing,) Multi-Family Development, and Mobile Home Parks.**

**A. Purpose and Applicability**

- (1) To allow for concepts of housing development where variations of design may be allowed, provided that the net residential density shall be no greater than is permitted in the district in which the development is proposed. Notwithstanding other provisions of this ordinance relating to dimensional requirements, the Planning Board, in reviewing and approving proposed residential developments located in the Town, may modify said provisions related to dimensional requirements to permit approaches to housing and environmental design in accordance with the requirements below and which further the goals of the South Berwick Comprehensive Plan. This shall not be construed as granting variances to relieve hardship.

- (2) To allow owners a reasonable return on their holdings, in such a way that the majority of existing open field, pasture, wetlands, waterways, wildlife habitat, scenic vistas, historic and archaeological assets, rare flora and fauna, and notable stands of forest may remain un-built for future generations, all residential subdivision and Planned Unit Development (PUD) proposals, regardless of size, may be laid out according to the cluster development standards below. The design shall result in the permanent retention of all natural, historical and cultural assets which have been identified by the Planning Board and which are consistent with the goals and policies of the South Berwick Comprehensive Plan.
- (3) Toward this end the Board may require that residential subdivision and Planned Unit development proposals be laid out according to the standards below and in a manner consistent with the South Berwick Subdivision Ordinance.

The Planning Board in making its determination whether or not clustering will be required shall consider the impacts that a non-clustered approach would have on the noted natural, historical and cultural resources. The Board and applicant shall refer to the Comprehensive Plan, the Town Open Space and Recreational Planning Map, the Salmon Falls River Greenbelt Plan, and any other relevant documents including the applicants own environmental analysis of the site. The Board and applicant shall also examine the existing built environment of the area proposed for development, analyzing historical structures, working landscapes, architectural design and land use. Particular emphasis should be given to the placement and setbacks of all buildings in the area.

## **B. Application Procedure**

- (1) All applicants proposing a subdivision, PUD, or Mobile Home Park, shall submit two plans for conceptual (Sketch Plan) review. One plan shall present the subdivision based on a conventional layout. The other plan shall be presented as a cluster development employing the standards as described in this section. The standards are not intended to discourage innovation, invention or creativity.

The number of units/lots in the cluster subdivision, whether proposed as a single family or multi-family development, shall in no case exceed the number of units/lots that could realistically be created in the standard subdivision.

The applicant shall also submit a brief narrative (two pages) describing the opportunities and constraints of the site, the surrounding land uses, areas of abutting interest, and how the proposal fits into the Town's Comprehensive Plan and Open Space/Recreational Plans.

- (2) The Planning Board and applicant may seek comments from the Conservation Commission, Historic Commission, Recreation Commission, any other Town Boards and Departments, and if appropriate, state agencies, at this time.

- (3) Before proceeding to the Preliminary Plan stage of subdivision review as detailed in the South Berwick Subdivision Ordinance, the Board shall make a determination as to whether the Preliminary Plan is to be submitted for review as a cluster development or conventional subdivision. The Board shall require that the Plan be clustered if the benefits of the cluster approach as outlined in the purpose section above and taking into account comments from various Boards and the applicants own site analysis - will prevent the loss of natural and historical features without increasing the net residential density of the subdivision.

### **C. Basic Requirements for Cluster Developments and PUDs**

- (1) Cluster development and PUDs shall meet all requirements for a subdivision, the street acceptance ordinance, and all other applicable town ordinances, including the performance standards of this Ordinance.
- (2) Each building shall be an element of an overall plan for site development. Only developments having a total site plan for structures will be considered. The developer shall illustrate the placement of buildings and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of this Ordinance.
- (3) The maximum number of dwelling units permitted on a tract of land, the total acreage allowed to be included in net density calculations (according to Section 140-20), less the land needed for roads (including shoulders and drainage ditches), shall be divided by the minimum lot size required in the District. The extent of soil types in the six categories listed in Section 140-20 shall be certified by a registered Soil Scientist licensed in the State of Maine, on a high-intensity soil survey map. No building shall be constructed on soil classified as being "very poorly" or "poorly" drained.
- (4) Common land within the proposed development shall be sufficient to conserve those resources which have been identified as being ecologically, historically or culturally important. Every building or lot within the cluster or PUD shall be within 1,000 feet of the common area unless the Planning Board determines that, in the particular circumstances of the proposed development, the purposes of Section 140-47A can be achieved with a different configuration. Where the development abuts a body of water, a usable portion of the shoreline, as well as reasonable access to it, shall be part of the common land.
- (5) The use of common driveways may be encouraged to prevent numerous entrances onto existing or proposed roads.
- (6) Shore frontage shall not be reduced below the minimum normally required in the zone.
- (7) Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, solar energy, natural drainage areas, and the existing built environment of the area, in accordance with an overall plan for site development.

**D. Cluster Development Standards for Single Family House Lots.**

- (1) When required to cluster, developers shall reduce lot dimensional requirements to no less than outlined in the chart below:

**MINIMAL DIMENSIONAL REQUIREMENTS FOR CLUSTERING**

District Lot Size	Lot Size	Frontage	Setbacks		
			Front	Side	Rear
3.0 A	30,000	150	30	25	25
2.0 A	20,000	125	30	25	25
1.0 A	15,000	125	25	20	20
.75 A	12,500	125	20	20	20
.5 A	10,000	100	20	20	20
.25 A	7,500	75	20	10	10

- (2) At a minimum, the total area of common land within the development shall equal or exceed the sum of the areas by which the building lots are reduced below the minimum lot area normally required in the district.
- (3) The location of subsurface wastewater disposal systems and equivalent reserve systems shall be shown on the plan. The reserve areas shall be restricted so as not to be built upon. Systems serving more than two units or exceeding 540 gallons per day are not permitted.

**E. Requirements for Planned Unit Developments and Multi family Developments.**

In addition to requirements of Section 140-31.C, the following requirements apply to all proposals reviewed as a Planned Unit (PUD) or multi-family development:

- (1) Any application to construct three or more units may be submitted as a PUD or multi-family development provided that the number of units proposed equals the number of units that could reasonably be built under a standard subdivision plan. No building shall contain more than six (6) dwelling units. The limitations of this subparagraph (1) shall not apply to the conversion of a building existing on February 25, 1999 to multi-family use in the B1 District. **[Added by Amendment January 25, 1999]**
- (2) The distance between all multi-family buildings shall be no less than fifty (50) feet. If a mixture of single family and multi family units is proposed the setbacks for the single family structures shall conform to the table above.
- (3) All units shall have reasonable access to the common lands.
- (4) All dwelling units in a Planned Unit Development shall be connected to a public sanitary sewer system at no expense to the Town.

- (5) All dwelling units in a Planned Unit Development shall be connected to a common water supply and distribution system either public or private at no expense to the Town.
- (6) A continuous landscaped area not less than twenty-five (25) feet in width containing shrubs, trees, fences, walls or any combination thereof which forms an effective visual barrier of not less than six (6) feet in height shall be located on all exterior lot lines of the development, except that driveways shall be kept open to provide visibility for vehicles entering and leaving the development. Depending on site conditions and location of the development the Planning Board may modify this standard.

**F. Dedication and Maintenance of Common Open Space and Facilities for Cluster and Planned Unit Developments**

- (1) Common open space shall be dedicated, in accordance with the following procedure, upon approval of the project. There shall be no further subdivision of this land, which shall only be used for non-commercial recreation, agriculture or conservation. However, easements for public utilities, or accessory structures for non-commercial recreation or conservation, may be permitted.
- (2) All land for conservation and recreational purposes shall be:
  - (a) Owned jointly or in common by a condominium or homeowners association;
  - (b) Owned by a trust (such as the Great Works Regional Land Trust) or association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
  - (c) Deeded to the Town of South Berwick, subject to Town acceptance.
- (3) The common open space shall be shown on the development plan and with appropriate notation on the face thereof to indicate:
  - (a) Common open space shall not be used for future building lots; and
  - (b) The boundaries of the common open space; and
  - (c) The planned owner of the common land.
- (4) An applicant for subdivision review under this section shall provide the Planning Board with copies of deed covenants for prospective purchasers, or conservation easements with the Town or land trust, describing land management practices to be followed by the party responsible for the common land.

**G. General Requirements for Homeowners Associations**

- (1) If any or all of the common open space is to be reserved for use by the residents, the declaration and by-laws of the proposed homeowner's association shall specify maintenance responsibilities and shall be submitted to the Planning Board for a determination of the adequacy of these maintenance responsibilities.

- (2) Covenants for mandatory membership in the association, setting forth the owner's rights and interest and privileges in the association and the common land, shall be reviewed by the Planning Board and included in the deed for each lot.
- (3) This homeowners association shall have the responsibility of maintaining the common open space(s) and other common facilities until, and if, accepted by the Town.
- (4) The association shall levy annual charges against all property owners to defray the expenses connected with the maintenance of open space, other common recreational facilities, common utilities, and town assessments.
- (5) The declaration and by laws of the proposed homeowners association shall specify the circumstances under which the association will become responsible for the maintenance of the common open space.

#### **Section. 140-48. 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 140- 12.A.(1), the Shoreland/Slope District in Section 140- 12.B.(1) and (2) and the resources identified in Section 140- 12.A.(2) and (3) except that if any of these standards conflict with a stricter provision of this chapter, the more restrictive provision shall apply:

##### **A. Agriculture.**

- (1) All spreading or disposal of manure shall be accomplished in conformance with the Maine Guidelines for Manure and Manure Sludge Disposal on Land, published by the University of Maine and the Maine Soil and Water Conservation Commission in July 1972, or subsequent revisions thereof.
- (2) There shall be no new tilling of soil within one hundred (100) feet horizontal distance, of any great pond; within seventy five (75) feet, horizontal distance, of any stream, river or wetland rated as "high" or "moderate" value wildlife habitat; nor within twenty five (25) feet of tributary streams and any major freshwater wetland. Operations in existence on the effective date of this section and not in conformance with this provision may be maintained after registration with the CEO.
- (3) Where soil is tilled in a Resource Protection District or where in excess of twenty thousand (20,000) square feet is tilled in a Floodplain or Shoreland Slope District, such tillage shall be carried out in conformance with the provisions of a conservation plan which meets the standards of the State Soil and Water Conservation Commission and is approved by the appropriate Soil and Water Conservation District. The spreading, disposal or storage of manure within the Shoreland/Slope or Resource Protection zone shall also require a Soil and Water Conservation Plan. The number of the plan shall be filed with the CEO. Nonconformance with the provisions of such conservation plan shall be considered to be a violation of this chapter.

- (4) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of any Resource Protection District (Section 140-12 A.(1). or river flowing to a great pond; or within seventy five (75) feet horizontal distance, of lands classified as Shoreland/Slope (Section 140-12.B). Within five (5) years of the effective date of this ordinance 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. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the five (5) year period.
- B. 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.
- C. Campgrounds.** Campgrounds shall conform to the minimum requirements imposed under state licensing procedures, Section 140-23 of this chapter, and the following:
- (1) The area intended for placement of the recreational vehicle, tent or shelter and utility and service buildings shall be set back a minimum of one hundred (100) feet from the normal high- water mark of any protected water body.
- D. Individual Private Campsites.** Individual private campsites not associated with campgrounds are permitted provided the following conditions are met:
- (1) One campsite per lot existing on the effective date of this section, or thirty thousand (30,000) square feet of lot area within the shoreland zone whichever is less, may be permitted.
  - (2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet from the normal high water line of areas zoned for resource protection (Section 140-12 A.(1) and from the Great Works and Salmon Falls rivers and set back at least seventy five (75) feet from the normal high water line of areas zoned for Shoreland/Slope protection (Section 140-12.B).
  - (3) Recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure(s) except canopies shall be attached to the recreational vehicle.
  - (4) The clearing of vegetation for the citing of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1,000) square feet.
  - (5) 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.

- (6) When a recreational vehicle, tent or similar shelter is occupied on-site for more than sixty 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. **[Amended 7-10-00]**

**E. Clearing of Vegetation for Development:** In any Resource Protection District and Shoreland/Slope District the clearing of vegetation will be limited to that which is necessary for uses expressly authorized in that district.

- (1) Within a Resource Protection District abutting a great pond there shall be no cutting of vegetation within the strip of land extending seventy-five (75) feet inland from the normal high-water mark except to remove safety hazards.

- (2) Except in areas as described in paragraph E.(1) 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 an area zoned for Resource Protection and the Salmon Falls and Great Works rivers and seventy five (75) feet from other water bodies listed as Shoreland/Slope and tributary streams a buffer strip of vegetation shall be preserved as follows:

- (a) There shall be no cleared opening greater than two hundred and fifty (250) square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed ten (10) feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. Adjacent to a Resource Protection zone the width of the footpath shall be limited to six (6) feet.

- (b) Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. For the purposes of this section a "well distributed stand of trees and other vegetation" adjacent to or within a Resource Protection Zone shall be defined as maintaining a rating score of 12 or more in any 25 foot by 25 foot square (625 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
>4-12 "	2
>12 "	4

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

- (c) Notwithstanding the above provisions, selective cutting of no more than forty percent (40%) of the total volume of trees four (4) inches or more in diameter, measured at four and one-half (4 1/2) feet above the ground level is allowed in any ten-year period.
- (d) In order to protect water quality and wildlife habitat in areas zoned for Resource Protection existing vegetation under three (3) feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as described in paragraphs 2 and 2 (a) above.
- (e) Pruning of tree branches, on the bottom 1/3 of the tree is permitted.
- (f) 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 the existing new tree growth is present.

The provisions contained in paragraph D.(2) above shall not apply to those portions of public recreational facilities adjacent to public swimming areas or to publicly held areas devoted to the provision of public access. Cleared areas, however, shall be limited to the minimum area necessary.

At distances greater than one hundred (100) feet, horizontal distance, from the normal high water line of any area zoned for Resource Protection and the Great Works and Salmon Falls rivers and seventy five (75) feet from any area zoned for Shoreland/Slope, there shall be permitted on any lot, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above the ground in any ten year period, except to allow for the development of permitted uses. 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 development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, 25% of the lot area or ten thousand square feet, whichever is greater, including land previously developed. This provision shall not apply to the B1, and B2 Districts.

- (g) Cleared openings legally in existence on the effective date of this section may be maintained, but shall not be enlarged, except as permitted by this section.
- (h) Fields which have reverted to primarily shrubs, trees or other woody vegetation shall be regulated under the provisions of this section.

**F. Erosion and Sedimentation Control.**

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

**G. Mineral Exploration.** 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. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitations.

**H. Additional Shoreland Structures.** Piers, docks, wharfs, 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:

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) 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.
- (4) The facility shall be located so as to minimize adverse effects on fisheries.
- (5) 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.
- (6) 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.
- (7) Except in the B1, and B2 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.

**I. Road and Driveways**

- (1) Roads and driveways shall be set back at least one hundred (100) feet from the normal high water line of any area zoned for Resource Protection and the Salmon Falls and Great Works Rivers and seventy five (75) feet from the normal high water line of any area zoned as Shoreland/Slope and tributary streams unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. 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 greater than twenty (20%) percent the road and/or driveway setback shall be increased by ten (10) feet for each five (5) percent increase in slope above twenty (20%) percent.

This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline due to an operational necessity.

- (2) Existing public roads can be expanded within the legal road right-of way regardless of its setback from a water body.
- (3) New roads and driveways are prohibited in a Resource Protection district except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practical from the normal high-water line of a water body, tributary stream or upland edge of a wetland.
- (4) Road 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 (5.) Road grades shall be no greater than ten (10) percent except for short segments of less than two hundred (200) feet.
- (5) In order to prevent road surface drainage from directly entering water bodies, roads shall be designed, constructed and maintained to empty onto an un-scarified buffer strip at least fifty (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, stream or wetland. Road surface drainage which is directed to an un-scarified 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.
- (6) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto un - scarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road or ditch. To accomplish this, the following shall apply:

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

<b>Road Grade (percent)</b>	<b>Spacing (feet)</b>
0-2	250
3-5	200-135
6-1	100-80
11-15	80-60
16-20	60-45
21 +	40

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

**J. Sanitary Standards.** All subsurface sewage disposal facilities shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules.

**K. Signs.** Signs shall conform to the requirements of Section.140-32 and the following:

- (1) Signs and billboards relating to goods and services sold on the premises shall not exceed six (6) square feet in area on each side and shall not exceed two (2) signs per premises. Billboards and signs relating to goods and services not rendered on the premises shall be prohibited.
- (2) Name signs shall be permitted, provided that such signs shall not exceed two (2) signs per premises.
- (3) Residential users may display a single sign not over three (3) square feet in area on each side, relating to the sale, rental or lease of the premises.
- (4) Signs relating to trespassing and hunting shall be permitted without restriction as to number, provided that no such sign shall exceed two (2) square feet in area.

- (5) Signs related to public safety shall be permitted without restriction.

**L. Structures**

- (1) All new principal and accessory structures shall be set back at least two hundred and fifty (250) feet from the normal high water line of any water body zoned as Resource Protection and one hundred (100) feet from the normal high water line of any water body zoned as Shoreland/Slope and tributary streams, except that within the B1 and B2 Districts a twenty five (25) foot setback shall apply.
- (2) The first floor elevation or openings of all buildings and structures including basements, shall be elevated at least one (1) foot above the elevation of the one-hundred-year flood, the flood of record or, in the absence of these, the flood as defined by soil types identifiable as recent floodplain soils.
- (3) Lot coverage 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 B1 and B2 districts where lot coverage shall not exceed seventy (70) percent.
- (4) 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 protected resource; and that the applicant demonstrates that no reasonable access alternative exists on the property.

**M. Non-conforming Structures**

- (1) 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. In addition:
- (2) Relocation: A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board through a Site Plan review, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules or that a new system can be installed in compliance with the law and said rules. 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 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 adjacent properties, the location of the septic system and other

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

- (3) **Reconstruction or Replacement:** Any non-conforming structure which is located less than the required setback from the normal high-water line of a water body, stream or wetland edge and which is removed or damaged or destroyed 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 Site Plan Review permit is obtained within one year of the date of said damage, destruction or removal and provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

Any non-conforming structure which is damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit, from the Code Enforcement Officer.

In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the Planning Board shall consider in addition to the criteria in paragraph 2 above, the physical condition and type of foundation present, if any.

- (4) **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 Site Plan Review application, determines that the new use will have no greater adverse impact on the water body 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, flood plain management, archaeological and historic resources and commercial fishing and maritime activities and other functionally water dependent uses.

## **N. Non-conforming Uses**

- (1) **Expansions:** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a Site Plan Review permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as permitted above.
- (2) **Resumption prohibited:** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a non-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.

- (3) 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, including water dependent uses, than the former use, as determined by the Planning Board through a Site Plan Review. The determination of no greater adverse impact shall be made according to criteria listed in Section 140-48.M (4) above.

#### **O. Parking Areas**

- (1) Parking areas shall meet the shoreline setback requirements for structures for the District in which such areas are located except in the B1 and B2 zones where these areas shall be set back at least twenty five (25) feet from the normal high water line of a protected resource. The setback for parking areas serving public boat launching facilities may be reduced to no less than fifty (50) feet from the normal high water line of a protected resource if the Planning Board finds that no other reasonable alternative exists.
- (2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent storm water runoff from flowing directly into a water body, and where feasible to retain all runoff on-site.

#### **P. Timber Harvesting**

- (1) 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 this chapter, 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.
- (2) 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.
- (3) 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.

- (4) 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:
- (a) Surface waters are frozen; and
  - (b) The activity will not result in any ground disturbance.
- (5) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel rock or similar hard surface which would not be eroded or otherwise damaged.
- (6) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.
- (7) Except in areas as described in Section 140-48, P(.2.) above, timber harvesting shall conform to the following provisions:
- (a) 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:
    - [1] Within one hundred feet (100) horizontal distance of the normal high water of a water body zoned for Resource Protection and within seventy five 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.
    - [2] 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 seventy five (75) 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.
- (8) Timber harvesting operations exceeding the (40%) percent limitation in paragraph (7)(a) 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.

**Q. Essential Services**

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation or expansion of essential services is not permitted in a Resource Protection District or Shoreland/Slope District except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

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

**S. Archaeological Sites:** 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, or in an area classified as being a "potential archaeological site" in the South Berwick Comprehensive Plan, 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.

**T.** All uses allowed within the Industrial Zone shall be deemed to be permitted uses within the Resource Protection District and shoreland Slope District for all within those overlay districts and within the Industrial Zone. This amendment shall not be deemed to amend the permitted uses within the Resource Protection District or Shoreland/Slope District outside of the Industrial Zone. **[Amended 1-13-97]**

**Section 140-48.1 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 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 twenty (20%,) a 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.

**Section. 140-49. Extractive Industry.**

- A.** The purpose of this section is to allow the extraction and processing of valuable sand, gravel, rock, soil, peat and other mineral deposits with a minimum of adverse impact upon ground waters, surface waters and neighboring properties.
- B.** Approval as Major Site Plan review.
- (1) The excavation, processing or storage of soil, topsoil, peat, loam, sand, gravel, rock or other mineral deposits shall be approved by the Planning Board following a Site Plan review and prior to commencing any such operation.
  - (2) The following earthmoving activities shall be allowed without Site Plan approval:
    - (a) The removal or filling of material incidental to construction, alteration or repair of a building or accessory structure or in the grading and landscaping incidental to such construction, alteration or repair.
    - (b) The removal or filling of material incidental to construction, alteration or repair of a public or private way or public utility.
    - (c) The excavation, processing or storage of less than ten (10) cubic yards of material on a parcel within any twelve-month period.
- C.** Application for Site Plan approval. Application for Site Plan approval by the Planning Board shall include:
- (1) A sketch plan which shows:
    - (a) The name and address of the owner of the property involved.
    - (b) The name and address of the operator who will undertake the earthmoving activity, if different from the property owner.
    - (c) The location and boundaries of the lot or lots for which approval is requested.

- (d) The names of the owners of all parcels of land directly abutting or directly across any street adjoining the property for which approval is requested.
  - (e) The location of all proposed access roads and temporary or permanent structures.
  - (f) The location of all natural or man-made water bodies within the proposed site or within one hundred fifty (150) feet of the proposed site.
  - (g) The topography of the proposed site shown with contour lines with a contour interval of not more than five (5) feet.
  - (h) The specific location of the proposed earth movement with an indication of the degree to which earth movement activity will occur within specified time intervals.
- (2) Written statements and/or sketch plans which detail:
- (a) The location and nature of proposed fencing, buffer strips, signs, lighting, parking and loading areas.
  - (b) The proposed method of earth movement.
  - (c) The estimated duration, regularity and working hours of the proposed operation.
  - (d) Plans to control erosion and sedimentation during the operation.
  - (e) Plans to stabilize unstable slopes.
  - (f) Plans to store and/or remove stripped vegetation and topsoil.
  - (g) Plans for the rehabilitation and restoration of the site upon completion of the operation, including the timing of such site restoration, the final grade and methods to control erosion and sedimentation both during and after reclamation activities.
  - (h) The effect of the proposed activity on existing and foreseeable traffic patterns in the town.

**D.** Performance standards. The Planning Board in granting Site Plan approval shall specify such requirements as it deems necessary or desirable to ensure compliance with the following performance standards:

- (1) No part of any extraction operation shall be permitted within one hundred (100) feet of any property or street line, except that drainage ways to reduce runoff into or from the extraction area may be allowed up to fifty (50) feet of such line. Natural vegetation shall be undisturbed and maintained in buffer areas.

- (2) No slope steeper than three (3) feet horizontal to one (1) foot vertical shall be permitted at any extraction site unless a fence at least four (4) feet high is erected to limit access to such locations.
- (3) Before commencing removal of any earth materials, the owner or operator of the extraction site shall present evidence to the Planning Board of adequate insurance against liability arising from the proposed extraction operations, and such insurance shall be maintained throughout the period of operation.
- (4) Any topsoil and subsoil suitable for purposes of revegetation shall, to the extent required for restoration, be stripped from the location of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased. Such stockpiles shall be protected from erosion according to the erosion prevention performance standards of this chapter.
- (5) Sediment shall be trapped by diversions, silting basins, terraces and other measures designed by a professional engineer, in order to protect the surface water bodies from sedimentation.
- (6) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications.
- (7) The hours of operation at any extraction site shall be limited, from 7:00 a.m. to 6:00 p.m. during weekdays, unless otherwise specified by the Planning Board.
- (8) Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load.
- (9) All access/egress roads leading to/from the extraction site to public ways shall be treated with suitable materials to reduce dust and mud for a distance of at least one hundred (100) feet from such public ways.
- (10) No equipment, debris, junk or other material shall be permitted on an extraction site except those directly related to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith shall be removed within thirty (30) days following completion of active extraction operations.
- (11) Within twelve (12) months following the completion of extraction operations at any extraction site or any one (1) or more locations within any extraction site, ground levels and grades shall be established in accordance with the approved plans filed with the Planning Board so that:
  - (a) All debris, stumps, boulders and similar materials shall be removed and disposed of in an approved location or buried and covered with a minimum of two (2) feet of soil. Only materials generated on-site may be buried or covered.

(b) Storm drainage and watercourses shall leave the location at the original natural drainage points, where practicable, and in a manner such that the amount of drainage at any point is not significantly increased.

(c) At least four (4) inches of topsoil or loam shall be retained or obtained to cover all disturbed land areas, which shall be reseeded and properly restored to a stable condition.

(d) The final grading slope shall be a three-to-one slope.

**E.** Surety and terms of approval. No approval shall be issued without some form of security to ensure compliance with such conditions as the Planning Board may impose. No approval shall be issued for a period to exceed five (5) years, although such approval may be renewed for additional periods in the same manner contained herein.

**F.** Existing conditions.

(1) Any commercial operation involving the extraction, processing or storage of soil, earth, loam, sand, gravel, rock or other mineral deposits in lawful operation at the time this chapter becomes effective may operate for a period of five (5) years from the effective date without Planning Board approval. Existing operations, however, must submit to the Planning Board within ninety (90) days of the effective date of this chapter a map indicating the area within which earth removal activity is anticipated within the five-year period and the area which has already been subject to earth removal activity. If no map is submitted within ninety (90) days, then the operation must cease, and no earth removal activities shall commence, continue or resume until a Site Plan permit has been issued by the Planning Board.

(2) Within thirty (30) days of the effective date of this chapter or amendments, the Code Enforcement Officer shall notify, by certified mail, return receipt requested, the owners of all property which to the best of his knowledge may come under the provisions of this section. Said notification shall inform the property owners of the above submission requirement. Failure of any property owner, after proper notification, to submit the required information to the Planning Board within ninety (90) days shall be a declaration of inactivity. No earth removal shall commence, continue or resume until the required permits have been issued.

If any existing operation is discontinued for a period of more than one (1) year, then no earth removal shall commence, continue or resume until the required permits have been obtained. "Discontinuation" is defined as being the excavation, processing or storage of less than ten (10) cubic yards of material.

#### **Section. 140-50. Amusement Centers.**

**A.** In addition to automobile parking spaces required in this chapter, all amusement centers shall provide facilities for the parking of bicycles. Bicycle racks shall be located off the sidewalk or other pedestrian way, and away from automobile traffic lanes. A minimum of one (1) space for every two (2) amusement devices shall be provided.

- B. Rest room facilities for the patrons shall be provided on the premises.

**Section. 140-51. Swimming Pools.**

No person or firm shall begin construction of or erect a swimming pool without first obtaining a building permit. The Code Enforcement Officer shall issue a permit only after satisfying himself, from plans or specifications presented by the applicant, that the proposed swimming pool will conform to the following requirements:

- A. Pools to be kept enclosed. A fence shall be erected and maintained around every swimming pool, except that portable above ground swimming pools (those that can be drained and moved) with sidewalls of at least 24 inches in height are exempt. Such fence shall be at least four feet in height with no openings larger than four (4) inches and built as to deter children. A dwelling house or accessory building may be used as part of this enclosure. All gates or doors opening through this enclosure shall be capable of being securely fastened at all times when not in actual use. All ladders shall be locked in a position as to discourage access to children when pool is unattended. **[Amended 7-19-00]**
- B. Setback requirements. No swimming pool shall be constructed closer than ten (10) feet to the side or rear lot line, nor closer to the front line of any lot than would be permitted for buildings or other structures by other provisions of this chapter. All mechanical equipment for the purposes of filtering, heating, pumping, cleaning, filling, draining or any other maintenance related activity shall not be located closer to a property line than the minimum yard setbacks of the zoning district in which the pool is located.

**Section. 140-52. Agriculture, Livestock.**

Agriculture, livestock for noncommercial purposes, with the livestock and by-products to be used by the applicant for their personal consumption, may be permitted in accordance with this chapter.

- A. All pastures, barns, barnyards and other areas where the livestock, animals or fowl are kept, housed, fed or cared for shall be a minimum of one hundred (100) feet from the nearest dwelling other than the applicant's.
- B. Uncovered manure shall be kept one hundred fifty (150) feet from the nearest dwelling other than the applicant's and three hundred (300) feet from any body of water or well.
- C. All feed and grain must be kept in enclosed rodent proof containers.
- D. All paddocks, barnyards or other enclosures must be adequately fenced to contain livestock, animals or fowl.

**Section. 140-53. Nonhazardous Solid Waste Processing**

- A. Nonhazardous solid waste processing facilities may dispose of solid waste only by incineration using facilities designed specifically for this purpose, except that noncombustible solid waste may be separated from combustible solid waste and temporarily stored on-site for subsequent off-site disposal.

- B.** Nonhazardous solid waste processing facilities must incinerate all combustible solid waste within twenty-four (24) hours of its arrival at the facility, except that incineration may be delayed an additional forty-eight (48) hours, provided that the combustible solid waste is stored in a vermin proof (fully enclosed) structure approved by the Planning Board.
- C.** The structure design shall be that of a permanently located structure; it shall have, within it or closely adjacent to it, facilities for washing and disinfecting the interior of the structure; it shall be equipped with fire detection devices and an automatically operated fire suppression system; it shall be an integral part of the solid waste disposal facility and shall be located on the facility site.
- D.** Unconfined temporary storage of combustible solid waste is prohibited.
- E.** Facilities for the temporary storage of noncombustible solid waste shall be of a design approved by the Planning Board. Unenclosed storage of noncombustible solid waste is prohibited.
- F.** The structure design shall be that of a permanently located structure; it shall be an integral part of the solid waste disposal facility and shall be located on the facility site.
- G.** The operating facilities shall be completely enclosed by a fence and gate(s) adequate to reasonably secure the facilities from unauthorized entry.
- H.** On-site disposal of any type of ash is prohibited.
- I.** On-site disposal of all noncombustible liquid wastes, except those resulting from essential sanitary installations is prohibited.
- J.** On-site disposal of combustible liquid wastes may be permitted following a thorough investigation by the Planning Board of each liquid that is proposed for disposal. The thorough investigation will examine the safety aspects of on-site handling, the effect on the environment of the products of combustion and the need for special equipment and procedures to safely accomplish incineration.
- K.** The provisions of Section 140-77, Site Plan Review, of this chapter will be followed for obtaining the approval or disapproval for each liquid proposed for incineration.
- L.** A permanent record of solid waste receipts at the site, showing date, carrier, amount, type, origin and receiver identity, shall be maintained. This record shall be made available to the South Berwick Town Manager in a form and at a frequency to be determined by the Town Manager.
- M.** An on-site housekeeping plan, approved by the Planning Board, shall be developed and implemented that will ensure that the site is constantly maintained in a litter-free condition.

- N. The applicant shall provide evidence satisfactory to the Town Council that he has the financial and technical resources to construct and operate the proposed facility.
- O. All other applicable performance standards of Article V of this chapter must be complied with; also, all applicable state and federal laws and regulations must be complied with.

**Section. 140-54. Accessory Buildings.**

No garage or other accessory structure shall be located in a required front yard. When located to the rear of the main building, the accessory structure shall be set back at least ten (10) feet from the side or rear lot lines, provided that all accessory structures, other than those that are water-oriented, shall be set back at least one hundred (100) feet from the normal high-water elevation of a body of water.

**Section. 140-55. Automobile Graveyards and Junkyards.**

Automobile graveyards shall meet the following standards:

- A. A permit must be obtained from the municipal officers after the Code Enforcement Officer has examined the following site considerations:
  - B. Site considerations:
    - (1) No motor vehicles or material shall be located on a sand and gravel aquifer or on an aquifer recharge area, as shown on the Town's Aquifer Protection maps available in the Town office.
    - (2) No motor vehicles or material shall be located within the one-hundred-year floodplain, as mapped by the Federal Insurance Administration, the Army Corps of Engineers or the United States Department of Agriculture.
    - (3) A visual buffer capable of completely screening from view all portions of the automobile graveyard or junkyard shall be established and maintained along all property lines.
    - (4) No motor vehicles or material shall be stored within five hundred (500) feet of any dwelling or school.
    - (5) No motor vehicles or material shall be stored within three hundred (300) feet of any water body.
    - (6) All criteria described in [30-M.R.S.A. Section 3755] must be met.
  - C. The applicant must also follow procedures outlined in Section 140-77 and meet criteria described in Section 140-77.E, Criteria and Standards.
  - D. Operational considerations. Upon receiving a motor vehicle, the battery shall be removed, and the engine lubricant, transmission fluid, brake fluid and engine coolant shall be drained into watertight, covered containers. No discharge of any fluids from any motor vehicle shall be permitted into or onto the ground.

## **Section. 140-56. Hotels/Motels and Inns.**

For traffic safety and immediately adjoining each motel, hotel or inn and to assure health, safety and welfare of occupants and of the neighborhood generally, the following land, space, building, traffic, utility and service design requirements shall be complied with. For the purposes of this section, the terms "hotel", "motel" and "inn" are used interchangeably.

- A.** The minimum lot size for any hotel shall contain not less than three (3) acres of total area. The minimum frontage shall be ten (10) times the posted speed limit of the most traveled way serving the development but not less than two hundred (200) feet lot width at the street and throughout the first two hundred (200) feet of depth of said lot back from the street. Access driveways into the development shall be at an angle no less than thirty (30) degrees and no more than forty-five (45) degrees to facilitate movement of traffic off the public way and onto the property. Driveways shall be separated by a minimum of one hundred (100) feet. The curb radius of the intersection of the driveway to public way shall be no less than thirty (30) feet. Access and egress drives shall not exceed a slope of two percent (2%) for the first seventy-five feet onto the property.
- B.** No part of any building on a motel lot shall be closer than sixty (60) feet to the front lot line, rear lot line or either side line of such lot. A green space, not less than twenty (20) feet wide, shall be maintained open and green with grass, bushes, flowers or trees all along each side lot line, the rear lot line and the front line of such lot, except for entrance and exit driveways. The green space shall not be used for automobile parking.
- C.** Buildings on a motel lot shall not cover more than fifteen percent (15%) of the area of the lot.
- D.** If cooking or eating facilities are provided in hotel rental units, each rental unit shall be considered a dwelling unit and the hotel shall be required to meet all the standards for multifamily developments in this chapter, including the residential density requirements of the appropriate district.
- E.** Each motel rental unit shall contain not less than two hundred (200) square feet habitable floor area enclosed by walls and roof, exclusive of any adjoining portions of roofed or covered walkways. Each motel rental sleeping room shall not be less than twelve-by-fifteen-foot horizontal dimensions, exclusive of bath. Each rental unit shall include private bathroom facilities.
- F.** On each hotel lot, one (1) apartment may be provided for a resident owner, manager or other responsible staff person.
- G.** Hotel building construction plans shall be reviewed and approved by the State Fire Marshal's office.
- H.** Parking stalls shall be designed to accommodate the traveling public by a minimum stall width of eleven (11) feet and stall depth of twenty-three (23) feet for perpendicular stalls. Angled stall parking width and depth shall be increased by ten percent (10%) and twenty-five percent (25%) above the standards contained in this chapter.
- I.** All hotels shall be connected to the public sewer and water systems.

**Section. 140-57. Bed-and-Breakfast.**

- A. The application for approval shall include a scale drawing of the lot showing the location of existing buildings, existing and proposed parking and existing and proposed sewage disposal systems.
- B. There shall be no less than one (1) parking space for each rental room in addition to the spaces required for the dwelling.
- C. There shall be one (1) bathroom provided for the rental rooms, in addition to the bathroom for the dwelling.
- D. Each rental room shall have not less than ten-by-twelve foot horizontal dimensions.
- E. Each rental room shall be equipped with an approved smoke detector.

**Section. 140-58. Restaurants and Take out Restaurants**

- A. The application for a permit shall state the maximum seating capacity of the restaurant. Any expansion or enlargement over the stated capacity shall require a new permit.
- B. Any restaurant located within five hundred (500) feet of an existing public sewer line shall connect with the sewer system at the expense of the owners. When subsurface wastewater disposal is probed, completed soil evaluation forms (HHE-200) shall be submitted. All proposed subsurface disposal systems shall meet the Maine State Subsurface Wastewater Disposal rules.
- C. All parking and loading facilities shall be located to the side or rear of the building, and shall be screened from abutting residences within two hundred (200) feet. Screening shall be comprised of a continuous landscaped area not less than eight (8) feet in width, containing evergreen shrubs, trees, fences, berms or any combination, forming a visual barrier not less than six (6) feet in height.
- D. Rest room facilities for the patrons shall be provided on the premises.

**Section. 140-59. Kennels and Veterinary Hospitals.**

- A. Structures or pens for housing or containing the animals shall be located not less than one hundred (100) feet from the nearest residence other than the owner's existing at the time of the permit.
- B. All pens, runs or kennels and other facilities shall be designed, constructed and located on the site in a manner that will minimize the adverse effects on the surrounding properties. Among the factors that shall be considered are the relationship of the use to the topography, natural and planted horticultural screening, the direction and intensity of the prevailing winds, the relationship and location of residences and public facilities on nearby properties and other similar factors.

- C. The owner or operator of a kennel shall maintain the premises in a clean, orderly and sanitary condition at all times. No garbage, offal, feces or other waste material shall be allowed to accumulate on the premises. The premises shall be maintained in a manner that will not provide a breeding place for insects, vermin or rodents.
- D. Temporary storage containers for any kennel or veterinary wastes containing or including animal excrement shall be kept tightly covered at all times and emptied no less frequently than once every four (4) days. Such containers shall be made of steel or plastic to facilitate cleaning and shall be located in accordance with the setbacks required for outdoor runs.
- E. If outdoor dog runs are created, they shall be completely fenced in and shall be paved with cement, asphalt or a similar material to provide for cleanliness and ease of maintenance.
- F. Any incineration device for burning excrement-soaked waste papers and/or animal organs or remains shall be located a minimum distance of four hundred (400) feet from the nearest residence other than the applicant's and shall have a chimney vent not less than thirty-five (35) feet above the average ground elevation. The applicant shall also provide evidence that he has obtained approval from the Maine Department of Environmental Protection for the proposed incinerator and that it meets state standards for particulate emissions, flue gas temperature and duration of required flue temperatures.
- G. All other relevant performance standards in Article V of this chapter shall also be observed.

**Section. 140-60. Schools, Colleges, Churches, Fraternal Organizations and Not-For-Profit Clubs.**

Public and private schools, colleges, churches, fraternal organizations and not-for-profit clubs shall meet the provisions below:

- A. A green strip, suitably landscaped, at least twenty (20) feet wide shall be provided along all property lines, except where driveways enter and exit.
- B. No building shall be closer than fifty (50) feet to a property line.
- C. When adjacent to residences within two hundred (200) feet, parking areas and outdoor activity areas shall be effectively screened from view by a continuous vegetative barrier or stockade fence not less than six (6) feet in height.

**Section. 140-61. Recreational Facility.**

All recreation facilities shall meet the provisions below:

- A. There shall be provided adequate off-street parking for the anticipated maximum attendance at any event.
- B. Containers and facilities for rubbish collection and removal shall be provided.

- C. Adequate screening, buffer area or landscape provisions shall be built, planted or maintained to protect adjacent residences from adverse noise, light, dust, smoke and visual impact.
- D. The proposed use shall not create a traffic hazard. The Police Department shall review the location and site plans and provide its comments to the Planning Board prior to or at the public hearing.

### **Section. 140-62. Timber Harvesting**

Timber-harvesting operations shall meet the following standards:

- A. No permit is required for the cutting and removal of up to ten (10) cords or 5,000 board feet of wood for personal use in any calendar year.
- B. No slash or other debris shall remain on the ground within the right-of-way or within a distance of fifty (50) feet from the nearest edge of the right- of-way of any public road for more than fifteen (15) days after accumulation.
- C. No slash or other debris shall remain on the ground within a distance of twenty-five (25) feet from the boundary of land of another for more than fifteen (15) days after accumulation.
- D. No timber-harvesting operations or stockpiling will take place in the town right-of-way.
- E. Within the public right-of-way of any new or proposed entrance onto a public way a culvert approved by the Road Commissioner may be required to ensure that the natural flow of drainage water will not be interrupted and to protect the shoulder of the public road.
- F. Where yarding and loading operations are conducted within fifty (50) feet of the right-of-way, all debris remaining after such operations shall be removed and the ground restored to its original contour.
- G. Any timber harvesting operation which will create less than fifty (50) square feet of residual basal area per acre is prohibited, unless a statement from a licensed professional forester is provided demonstrating that such a harvest is appropriate.
- H. Within fifty (50) feet of any public road, timber harvesting shall be limited to selective cutting, which provides that cutting will be limited to fifty per cent (50%) of the basal area which existed prior to the start of the operation.
- I. The timber harvester shall conduct the operations in such a way to minimize soil erosion and sedimentation of surface waters. Operations shall conform to guidelines outlined in the book, Erosion and Sediment Control Handbook for Maine Timber Harvesting Operations, Best Management Practices, June 1991, prepared by the Maine Forest Service.
- J. Timber harvesting operations in the Shoreland Zone must conform to those standards outlined in Section 140-48 of this chapter.

- K.** Timber harvesting shall conform to all applicable state laws and regulations, unless local ordinances are more restrictive.

**Section. 140-63. Family Day Care. [Added 11-27-1989]**

- A.** The applicant shall demonstrate that there is sufficient area for the delivery and pickup of children so that vehicles need not back onto town roads. Parking requirements in Section 140-24 shall be used as a guideline.
- B.** The applicant shall furnish the Code Enforcement Officer with a copy of a state license and any other required approvals and permits.
- C.** If a safety hazard is perceived, the CEO may require a landscaped barrier or fence not less than three and one-half (3 1/2) feet in height.

**Section. 140-64. Day Care Center. [Added 11-27-1989]**

- A.** The applicant shall meet the minimum required parking spaces outlined in Section 140-24.H of this chapter.
- B.** The applicant will construct parking area/driveways so that vehicles delivering and picking up children shall not back onto a road.
- C.** The applicant shall furnish the Code Enforcement Officer with a copy of a state license and any other required approvals.
- D.** The applicant shall provide a fenced or landscaped barrier around the areas not less than three and one-half (3 1/2) feet in height.
- E.** If required by Planning Board, the applicant shall furnish a plan by which a licensed site evaluator for a new or replacement septic system in accordance with Chapter 19 of the State of Maine Plumbing Rules, and the applicant shall comply with the provisions of Chapter 19.D.3 of the State of Maine Plumbing Rules.

**Section 140-65. Rural Overlay District Standards**

For any new dwelling in the R4 and/or R5 Districts, with frontage on an existing or proposed public way, the following shall apply:

- A.** A fifty (50) foot vegetated buffer shall be retained along all lot lines with frontage on the public way, with the exception of driveways and clearings needed to meet safe sight distance requirements.
- B.** For the purposes of this section, a vegetated buffer shall mean not more than forty (40%) percent of the trees four inches in diameter and larger, measured four and one-half feet above the ground, may be cut in any ten year period and a well distributed stand of foliage shall remain to maintain the esthetic and rural character of the public way.

- C. If due to topography, lot configuration or size, septic system restrictions, lack of vegetation or other factors as determined by the Code Enforcement Officer, such a buffer is not feasible, the Planning Board shall hear the application as a Minor Site Plan review.

**Section 140-66. Wellhead Protection Review**

- A. For any proposed principal use and/or principal building outside of the 300 foot wellhead protection zone as described in section 140-12.A.2 (g) but within a 600 foot radius of the wellhead, a Minor Site Plan Application in accordance with 140-77 shall be required. The Planning Board shall seek comments from the South Berwick Water District when reviewing such application. **[Adopted 5-28-96]**

**Section 140-67. Restrictions on Adult Business Establishments**

- A. **Statement of Findings.** The South Berwick Town Council, having observed the experience of other communities, as reported in court decisions, in the press and in other literature, finds that adult businesses, as defined in subsection (B) below, can have a blighting influence on surrounding neighborhoods if permitted in certain zones, or if allowed in close proximity to incompatible uses such as residences, schools, child care facilities, parks, playgrounds, churches and public buildings, and that such adult businesses have the potential to attract and encourage various types of criminal, illicit or unhealthful behaviors unless appropriately controlled as to the time, place and manner of their operation. The South Berwick Town Council has also observed the experiences of other communities, as reported in court decisions, in the press and in other literature, concerning the potential public health risks of viewing booths as defined in subsection (B) below, in particular the risk that such viewing booths, if not properly regulated, may encourage acts of prostitution and the commission of other sexual acts which could promote the transmission of Acquired Immune Deficiency Syndrome and other sexually transmitted diseases.

- B. **Definitions.**

- (1) "Adult Business" means any business, a substantial or a significant portion of which consists of selling, renting, leasing, exhibiting, displaying or otherwise dealing in materials which depict or describe any of the following:

- (a) human genitals in a state of sexual stimulation or arousal;

- (b) acts of human masturbation, sexual intercourse or sodomy;

- (c) fondling or other erotic touching of human genitals, pubic region, buttock or female breast;

- (d) less than completely and opaquely covered:

- [1] human genitals, pubic region,

- [2] buttock,

[3] female breast below a point immediately above the top of the areola;  
and

(e) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(2) "Viewing Booth" means any booth, cubicle, room or stall within the premises of an adult business used to display, by audio or visual reproduction, projection or other means, any of the materials described in subparagraph (1) above.

(3) "Public Building" means a building owned, operated or funded in whole or in part by the Town of South Berwick which members of the general public have occasion to visit, either regularly or occasionally, such as, but not limited to, the Town Hall, the Public Library, the Police Station and Fire Stations.

**C. Location of Adult Businesses Restricted.** No adult business shall be located:

(1) in any zoning district other than the Industrial District, I1, or

(2) in any location where the customer entrance to the adult business would be closer than 1,000 feet, measured in a straight line without regard to intervening structures or objects, to the nearest point on the boundary of any property which is:

(a) occupied by a residence, school, child care facility, park, playground, church or public building,

(b) located in a residential zone, or

(c) occupied by another adult business.

**D. Outside Displays Prohibited.** No materials described in subsection (B)(1) above shall be visible from the exterior of the building in which the adult business is located.

**E. Design of Viewing Booths.** Viewing booths shall be designed, located and lighted so that the interior of each viewing booth is clearly visible from the interior common areas of the premises and visibility into the viewing booths shall not be blocked or obscured by any doors, curtains, partitions, drapes or any other visual barriers.

## **ARTICLE VI Administration**

### **Section. 140-68. Administration and Enforcement.**

This chapter shall be administered and enforced by a Code Enforcement Officer or his designated alternate appointed by the Town Manager, pursuant to the Town Charter.

## **Section. 140-69. Basic Requirements.**

### **A. Permit Required**

The following activities shall require the issuance of a permit prior to the start of construction.

- (1) Floodplain area. All construction or other improvements in an area of special flood hazard.
- (2) New construction. All new construction of buildings or structures.
- (3) Alterations, repairs and additions. Alterations, repairs or additions which include structural modifications of the external dimensions of a building or structure or parts thereof.
- (4) Moving/demolition. All buildings or structures.

### **B. Permit Not Required**

The following activities shall not require a building permit: repairs, replacement, normal maintenance and decorative changes, provided that the activity is in conformance with federal, state or local laws and does not involve any physical modifications or change requiring a permit under this chapter.

## **Section. 140-70. Building Permit.**

- A. All applications for building permits shall be submitted, in writing, to the Code Enforcement Officer on forms provided for that purpose.
- B. Within seven (7) days of the filing of an application for a building permit, the Code Enforcement Officer shall act on such application. His decision shall be in writing on a form designated for the purpose and communicated directly to the applicant. One (1) copy of the Code Enforcement Officer's decision shall be filed in the municipal office. In cases where the Code Enforcement Officer deems that Site Plan review is required, he shall also provide a copy of his decision to the Planning Board. Failure of the Code Enforcement Officer to act on an application within seven (7) days shall constitute denial, unless the applicant and the Code Enforcement Officer agree to enlarge the time for decision. **[Amended 8-14-00]**
- C. The decision to approve an application shall be made only after the Code Enforcement Officer has made reference to his land use regulation file and has determined that the proposed building, structure or land usage is in compliance with all applicable land use statutes, ordinances and regulations.
- D. In the event that the proposed building or structure is so constructed or is of such usage as to require a review of the application by other authorities or boards, as determined by reference to the land use regulation file, the Code Enforcement Officer shall defer action on the building permit application and, in writing, refer the applicant to the appropriate authority or board for review, approval or denial. Such referral shall not be considered a denial of the building permit application. Upon his receipt of the decision of the

reviewing authority or board, in writing, and, if such decision is an approval, the Code Enforcement Officer shall issue the permit with any conditions prescribed by the reviewing authority or board.

- E.** No building permit for a building or structure on any lot shall be issued except to the owner of record or his authorized agent nor unless the proposed construction or alteration of a building or structure shall comply, in all respects, with the provisions of this chapter. Any application for a permit shall be accompanied by a plan, accurately drawn to scale, showing:
- (1) The actual shape and dimensions of the lot to be built upon.
  - (2) The location and size of all buildings or structures already on the lot.
  - (3) The location and size of new buildings to be constructed.
  - (4) The existing and intended use of each building or structure.
  - (5) Such other information as may be necessary for the administration and enforcement of this chapter.
  - (6) If determined necessary by the Code Enforcement Officer, a high-intensity soil survey, meeting the standards of the United State Department of Agriculture Soil Conservation Service National Cooperative Soil Survey shall be submitted.
  - (7) All new residential structures must meet the requirements of the Maine Energy Building Standards. Log homes with a wall thickness of eight (8) inches or more are exempted from the wall standards only. **[Added 12-12-1988]**
- F.** Applications for permits with their accompanying plans and building permits shall be maintained as a permanent record in the municipal office by the Code Enforcement Officer.
- G.** A building permit secured under the provisions of this chapter shall expire if the work or change is not commenced within one (1) year of the date on which the permit is granted.
- H. Access **[Amended 1-11-1999]****
- (1) Notwithstanding the provisions of 140-5(e) concerning nonconforming lots of record, no building permits shall be issued to erect a new principal building and no new principal buildings shall be erected on any lot unless such lot abuts a road which provides access to the lot by motor vehicle. Such road must be: (1) a public way maintained by the Town of South Berwick or the State of Maine; (2) a road shown on and constructed in accordance with the requirements of a subdivision plan approved by the South Berwick Planning Board; or (3) a private road constructed to the standards of Appendix A of this ordinance.
  - (2) A lot of record existing on November 27, 1987 and located on a private road is exempt from the requirements of 140-7(H)(1) above if certification by a civil engineer that the road met applicable town standards was filed with the town prior

to November 27, 1987, provided that no more than one dwelling is erected on such lot.

- (3) The applicant for a building permit for a lot for which access is to be provided by a private road shall be responsible for bringing the entire private road, from the nearest public road up to and including that portion of the private road which abuts the applicant's lot, into compliance with the standards of Appendix A, Notwithstanding that other lots served by the private road may already have been built upon. Upon a showing of undue hardship, the Board of Appeals may grant a variance from the standards of Appendix A.
- (4) Before issuing a building permit to erect a new principal building or structure on a lot for which access is to be provided by a private road, the Code Enforcement Officer shall determine that emergency vehicles will have adequate access to the building or structure. In making that determination, the Code Enforcement Officer may consult with the providers of fire, police and emergency medical services within the Town.
- (5) **Inspection by Professional Engineer**

All Private Roads shall be inspected by a registered professional and certified by that engineer that the road meets the above requirements.

#### **I. Estate Lots [Added 4-26-1999]**

Notwithstanding the minimum street frontage requirements of Table B and the access requirements of Section 140-70.H, one single family dwelling (including any buildings or structures lawfully accessory thereto) may be constructed on a lot which meets the following requirements (an Estate Lot:)

- (1) The Estate Lot or the portion of the Estate Lot on which the single family dwelling will be constructed is located to the rear of a lot which meets the street frontage and access requirements for the Zoning District in which it is located (the "front lot.")
- (2) The area of the Estate Lot is at least two times the minimum lot size required within the zoning district according to Table B.
- (3) Access to the Estate Lot is provided by a strip of land (the "access strip") which is no greater than thirty-five (35) feet in width at its intersection with the street or road which provides access to the front lot; the access strip may be part of the Estate Lot or may be an easement over the front lot. The access strip must be identified by points certain within the property deed(s.)
- (4) The front lot continues to meet the street frontage and minimum lot size required within the zoning district according to Table B after subtraction of the area of the access strip, and all buildings or structures on the front lot meet the same setbacks from the access strip as are required by Table B for setbacks from lot lines.

- (5) Except as provided in paragraph 6 below, the access strip shall serve only one single family dwelling and its lawful accessory buildings or structures.
- (6) If, after the creation of an estate Lot, the access strip serving the Estate Lot is to become an access for any additional principal buildings or structures, then the entirety of the access strip must be brought into compliance with the applicable requirements of Section 140-70.H before any permit shall be issued for the proposed new buildings or structures. Both existing structures and the proposed new buildings and structures must meet the same setbacks from the access strip as are required by Table B for setbacks from lot lines.
- (7) Only one Estate lot may be created from a lot of record on April 26, 1999. An Estate Lot may not be created from a lot which has been divided after April 26, 1999.

### **Section. 140-71. Plumbing Permit Required.**

No building permit shall be issued for any structure or use involving the construction, installation or alteration of plumbing facilities unless a valid plumbing permit has been secured by the applicant or his authorized agent in conformance with state law.

### **Section. 140-71.1 Certificate of Use and Occupancy**

- A. **New Buildings.** A building or structure hereafter erected, except for detached accessory buildings and structures not intended for human occupancy, shall not be used or occupied in whole or in part until a certificate of use and occupancy has been issued by the Code Enforcement Officer.
- B. Any enlargement, extension or structural modification to an existing building or structure which would require a certificate of use and occupancy under subsection A if the building were new construction shall also require a certificate of use and occupancy prior to occupancy.
- C. **Change in Use.** Whenever the principal use of a building or structure shall change, the owner shall not use or occupy the building or structure until a certificate of use and occupancy has been issued by the Code Enforcement Officer. This code shall not require the removal, alteration or abandonment of, or prevent the continuance of, the use and occupancy of a lawfully existing building or structure, unless such use is deemed to endanger public safety and welfare.
- D. **Temporary Occupancy.** Upon the request of the holder of a building permit, the Code Enforcement Officer shall issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the permit shall have been completed, provided that such portions will be occupied safely prior to full completion of the building or structure without endangering life or public welfare. A temporary certificate of occupancy issued under these provisions shall expire one year from the date it is issued or when replaced by a certificate of use and occupancy.

- E.** Contents of Certificate. When a building or structure meets the requirement of this ordinance, the Code Enforcement Officer shall issue a certificate of use and occupancy within ten days after written application. The certificate shall certify compliance with the provisions of all applicable ordinances of the Town and state that the plumbing is approved as required in the State of Maine Plumbing Code, and will state the purpose for which the building or structure will be used and any special stipulations and conditions of the building permit.
- F.** Prior to the issuance of a certificate of use and occupancy for any structure to be served by an individual on-site water supply well, a water quality analysis demonstrating that the supply has met the Maine Safe Drinking Water Guidelines shall be submitted to the Code Enforcement Officer.
- G.** Failure to obtain a certificate of use and occupancy shall be a violation of this ordinance and is punishable under the provisions of Section 140-74 of this ordinance.

**Section. 140-72. Fee.**

A building permit and occupancy permit shall be issued only upon payment of a fee according to a schedule to be established by the Town Council.

**Section. 140-73. Enforcement Officer.**

- A.** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this chapter. If the Code Enforcement Officer shall find that any provision of this chapter is being violated, he shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. he shall order the removal of illegal buildings, structures, additions or work being done and shall take any other action authorized by this chapter to ensure compliance with or to prevent violation of its provisions.
- B.** The Code Enforcement Officer shall maintain a current file of all pertinent federal, state and local statutes, ordinances, regulations, codes and plans relating to land use regulation and approved subdivision plans.
- C.** The Code Enforcement Officer shall maintain a record of fees collected.
- D.** The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to approval. The Code Enforcement Officer, in the performance of his duties, shall have freedom of access at reasonable hours for inspection purposes, with the consent of the owner, to all parts of any building or structure regulated by this chapter. When necessary, the Code Enforcement Officer may obtain an administrative warrant from the District Court.

**Section. 140-74. Legal Action and Violations.**

When any violation of any provision of this chapter shall be found to exist, the Municipal Attorney, upon recommendation of the Code Enforcement Officer, is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable that may be appropriate or necessary to enforce the provisions of this chapter in the name of the municipality.

**Section. 140-75. Fines.**

Any person, firm or corporation being the owner or having control or use of any building or premises who violates any of the provisions of this chapter shall commit a civil violation and, upon being found liable, shall be fined in accordance with *[30-A M.R.S.A. Sec. 4452.]* All fines are payable to the Town.

**Section. 140-76. Appeals and Zoning Board of Appeals.**

**A. Board of Appeals.**

- (1) Establishment. A Board of Appeals is hereby established in accordance with *[30-M.R.S.A. Sec. 2691]* and the provisions of this chapter.
- (2) Appointment and Composition.
  - (a) The Board of Appeals shall be appointed by the municipal officers and shall consist of seven (7), all of whom shall be legal residents of the Municipality, serving staggered terms of at least three (3) years and not more than five (5) years. Neither a municipal officer nor his spouse may be a member of the Board. The Board shall elect annually Chairman, Vice Chairman and Secretary from its membership.
  - (b) The Chairman shall call meetings of the Board as required. The Chairman shall also call meetings of the Board when requested to do so by a majority of the members or by the municipal officers. A quorum of the Board necessary to conduct any official Board business shall be four (4) members. The Chairman shall preside at all meetings of the Board and be the official spokesman of the Board.
  - (c) The Secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The Secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. All records to be maintained or prepared by the Secretary are deemed to be public, shall be filed in the Municipal Clerk's office and may be inspected at reasonable times.
  - (d) Any questions of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, excluding the member who is being challenged.

## **B. Powers and Duties.**

- (1) Administrative Appeals. 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 Subsection C below. 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.
- (2) Variance Appeals. A variance may be granted by the Board only where strict application of the chapter or a provision thereof to the petitioner and his property would cause undue hardship. The words "undue hardship", as used in this section, mean:

  - (a) That the land in question cannot yield a reasonable return unless a variance is granted.
  - (b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
  - (c) That the granting of the variance will not alter the essential character of the locality.
  - (d) That the hardship is not the result of action taken by the applicant or a prior owner.
  - (e) Within the Shoreland Zone, the Board of Appeals may grant a variance by first making a finding of undue hardship as in Subsection B(2) above. If undue hardship has been found, the Board of Appeals must also make a finding that the proposed use would meet the specific criteria outlined in Section 140-77.E (1) through (19).
- (3) A variance is authorized only from the dimensional requirements of Table B and C of this chapter. Establishment or expansion of a land use otherwise prohibited shall not be allowed by variance. The Board of Appeals may grant a variance only by the concurring vote of a majority of the votes cast and, in doing so, may prescribe conditions as are appropriate under this chapter. A tie vote shall constitute a denial of the variance appeal.
- (4) A copy of all variances granted by the Board of Appeals in the Resource Protection or Floodplain and Shoreland Slope District shall be submitted to the Department of Environmental Protection.

## **C. Appeal Procedure.**

- (1) In all cases, a person aggrieved by a decision of the Code Enforcement Officer or the Planning Board shall commence his appeal within thirty (30) days after a

decision is rendered. The appeals shall be filed with the Board of Appeals on forms approved by the Board, and the aggrieved applicant shall specifically set forth the grounds for the appeal. The appellant, at the time of filing, will be charged a fee as determined by the Town Council, plus the cost of notifying, by certified mail and return receipt, all abutters.

- (2) The Board of Appeals shall schedule a public hearing to be held within thirty (30) days of the receipt of an application.
- (3) The Board of Appeals shall notify, by certified mail, return receipt requested, the appellant and the abutters, at least seven (7) days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing thereon.
- (4) The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals.
- (5) At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.
- (6) The Code Enforcement Officer or his designated alternate will attend all hearings and will present to the Board of Appeals all plans, photographs or other material the Board deems appropriate for an understanding of the appeal.
- (7) The Board shall provide by rule, which shall be recorded by the Secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the Chairman upon good cause shown.
- (8) The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- (9) The transcript of testimony, if any, and exhibits, together with all appeals and requests filed in the proceeding, shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.
- (10) Within ten (10) days of the public hearing, the Board of Appeals shall reach a decision as defined in Subsection C(9) above on the appeal, and a copy of the decision shall be mailed or hand delivered to the appellant, his representative or agent, the Code Enforcement Officer, the Planning Board, the Municipal officers and abutters appearing of record at the public hearing within seven (7) days of the Board's decision.

- (11) Upon notification of the granting of an appeal by the Board of Appeals, the affected authority shall issue any necessary permits in accordance with the conditions of the approval.
- (12) Rehearing. The Zoning Board of Appeals may decide to rehear an appeal only if all parties to the original appeal agree, in writing, to a rehearing or if the appellant can demonstrate to the satisfaction of the Zoning Board of Appeals that they have sufficient new evidence to present of a type which would constitute a new appeal or if there has been a change in the chapter which affects the appeal.
- (13) Any party may take an appeal, within 45 days after the decision is rendered, to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B.

### **Section. 140-77 Site Plan Review**

#### **A. Purpose**

This section is enacted under the authority of the Home Rule Powers as provided for in Article VII -A of the Maine Constitution and *MRSA, Title 30A, Section 3001*. This Site Plan Review section regulates the development of structures and sites in a manner which considers the following concerns, and where necessary, requires a modification of development proposals to eliminate or minimize potential problems and nuisances. The purposes of this section are to:

- (1) Balance the rights of land owners to use their land with the corresponding rights of abutting and neighboring landowners to live without undue disturbances (e.g. noise, smoke, fumes, dust, odor, glare, storm-water runoff, etc.);
- (2) Provide for the convenience and safety of vehicular and pedestrian movement both within and outside the site, and in relation to adjacent areas and roads;
- (3) Ensure the adequacy of waste disposal methods and protection from pollution of surface or groundwater;
- (4) Protect the historic and natural environmental features of the site under review and in adjacent areas;
- (5) Ensure consistency with the goals, policies and ideals of the South Berwick Comprehensive Plan; and
- (6) To provide design input from the Planning Board and Town Officials at an early stage of plan development.

#### **B. Applicability**

Site Plan approval by the Planning Board in conformity with the criteria and standards of this section, shall be required for uses in each district which specifically require Site Plan approval as listed in Table A of this ordinance. In addition, Site Plan approval will be required for the "expansion" of any existing use which would require Site Plan approval

in accordance with Table A of this ordinance. Expansion shall mean an increase in the amount of existing floor area used for an existing use within an existing building; an increase in the number of buildings or area used for an existing use; additions to existing building; the addition of a new service or product; and a change or modification to an approved site plan, including a change in use.

### **C. Administration**

- (1) The Planning Board of South Berwick is hereby authorized to hear and decide upon applications for Site Plan Review, in accordance with State law and the provisions of this Ordinance.
- (2) The South Berwick Code Enforcement Officer shall determine whether Site Plan Review is required. At that time, based on the Land Use Table (Table A), he shall also classify the use as requiring either Major or Minor Site Plan Review, or determine that no Site Plan Review is required. The decision of the Code Enforcement Officer under this paragraph may be appealed to the Board of Appeals within thirty (30) days after the Code Enforcement Officer notifies the applicant of his decision.
- (3) Any person requiring Major Site Plan review under this section, as determined by the South Berwick Code Enforcement Officer, shall submit a sketch plan application addressed to the South Berwick Planning Board and delivered to the Town Office, in care of the South Berwick Town Planner / Planning Coordinator during regular business hours. A sketch plan application shall consist of a cover form prescribed by the Board, together with a conceptual site plan for the proposed use.
- (4) A sketch plan conference will be scheduled at the next regularly scheduled Planning Board Meeting. The applicant shall immediately notify all abutters in writing of the application and sketch plan meeting date. The applicant shall be prepared to provide the Board with an understanding of the site and the opportunities and constraints to its use. A brief graphic and narrative analysis of both the natural and built environment on and abutting the site should be presented. This information should include, but not be limited to, boundaries, topography, significant natural features, such as wetlands, streams, wildlife habitat, soils, vegetation, and other features such as utilities and any easements or covenants on the property. The board shall take this opportunity to provide input on the design of the site and what if any additional information will be required for the formal review. The Board reserves the right during this sketch plan meeting to invite public comment on the proposal to gather further information on the site and its surroundings. The applicant may also take this opportunity to request a waiver from specific submission requirements as outlined in Section 140-77.D.
- (5) Following the sketch plan conference, or if the application is for Minor Site Plan review, the applicant shall submit a formal application, together with all fees and submission materials listed in Section 140-77.D.

- (6) Within twenty one (21) days of the filing of the formal application, the Town Planner shall notify the applicant in writing either that the application appears to be a complete application, or if the application is incomplete, the specific additional materials needed to make a complete application. After the Town Planner / Planning Coordinator has made his/her determination that a complete application has been filed, it shall notify the applicant in writing that, in his opinion the application is complete and will be scheduled for the next regularly scheduled Planning Board meeting. The determination by the Town Planner / Planning Coordinator that a complete application has been filed is an advisory determination only.
- (7) At the initial review of the formal application, the Planning Board shall immediately act on the recommendation of the Planner that the application is complete. If the Board concurs with the recommendation of the Planner, the formal review process begins. If, by a majority vote of the Board, a determination is made that the application is not complete, the Board shall provide specific details to the applicant on what is required to make a complete application. Only the South Berwick Planning Board can make the official determination that an application is complete. The Board may also vote to conduct a site visit at this time.
- (8) The Planning Board may hold a public hearing within thirty (30) days of the filing of the completed application. The Board shall publish the time, date and place of the hearing at least seven (7) days prior to the hearing in a newspaper of area wide circulation. Abutting property owners shall be notified in writing, through certified mail, of the date, time and purpose of the hearing. The cost of such notifications shall be borne by the applicant.
- (9) Within thirty (30) days of the public hearing or sixty (60) days of receiving a complete application, the Planning Board shall act to approve, approve with conditions, or disapprove the application. The time limit for review may be extended by mutual agreement between the Planning Board and the applicant.
- (10) Within seven (7) days of reaching its decision, the Planning board shall notify the applicant in writing of any action taken, and the reason for such action.
- (11) Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall immediately issue, issue with conditions prescribed by the Planning Board, or deny a building and/or occupancy permit.

**D. Site Plan Review Application and Submission Requirements**

Applications for Site Plan Review shall be submitted on application forms provided by the Town. The complete application form, required fees, and the required plans and related information shall be submitted to the Planning Board Chairman in care of the Town Planner / Planning Coordinator. The submission shall contain at least the following exhibits and information:

- (1) A fully executed and signed copy of the application for development review.
- (2) Five (5) copies of written materials plus five (5) sets of maps or drawings containing the information listed below. The maps or drawings shall be at a scale sufficient to allow review of the items listed, but in no case shall be at scale of more than fifty (50) feet to the inch for that portion of the tract of land being proposed for development. The following shall be included:
  - (a) Name of the project, boundaries, and locus maps showing site's location in town, north arrow and scale of the plan. Depending on the location of the property a larger scale locus map may be required showing other major developments in the area and other important natural resource features and the projects' relationship to these features.
  - (b) Name and address of the owner of record, developer, copy of the deed to the property, option to purchase the property, or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
  - (c) Names and addresses of all owners of record of abutting parcels.
  - (d) All existing lot lines, easements and rights-of-way, abutting land uses and the location and use of abutting structures and drives.
  - (e) The location and use of all existing and proposed buildings and structures within the development. Include all dimensions of height and floor area, and show all exterior entrances and possible future additions.
  - (f) The location of all present and proposed public and private ways, parking areas, driveways, sidewalks, ramps, curbs, paths, landscaping, walls and fences. Location, type and screening details for all waste disposal containers shall be shown.
  - (g) The location, height, intensity, and bulb type of all external lighting fixtures, the direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.
  - (h) The location, height, size, materials and design of all proposed signage. Signage on abutting properties shall also be shown.

**For Major Site Plan Review The Following Information Is Also Required:**

- (i) The location of all present and proposed utility systems including, sewerage or septic system; water supply system; telephone, cable and electrical systems; storm drainage systems both existing and proposed. A written statement from the servicing utility district documenting the availability of service shall be required if appropriate.
- (j) A stormwater management plan, prepared by an engineer licensed in the State of Maine, if required by the Board.

- (k)** An erosion and sedimentation control plan, if required by the Board.
- (l)** Existing and proposed topography at a minimum of five (5) foot contours. The Board may require two (2) foot contours if conditions warrant such mappings. The location of any 100 year flood plain shall also be shown and base flood elevations given. Indicate areas within the proposed site and within fifty (50) feet of the proposed site, where ground removal or filing is required and give its approximate volume in cubic yards. A soils map based on the York County Soils Survey shall also be provided. The Board may require a high intensity soils map, prepared by a soils scientist licensed in the State of Main, if conditions warrant.
- (m)** A landscape plan, prepared by a registered landscape architect showing all existing natural land features, trees, forest cover and water sources and all proposed changes to these features including size and type of plant material. Water sources will include ponds, streams, lakes, brooks, wetlands and drainage retention areas.
- (n)** Zoning district boundaries within five hundred (500) feet of the site's perimeter, zoning boundaries which may transect the site and zoning overlay boundaries.
- (o)** Traffic flow patterns within the site, entrances and exits, loading and unloading area, curb cuts on the site and within one hundred (100) feet of the site.

The Planning Board may require a detailed traffic study, conforming to the South Berwick Planning Board's, Submission for Traffic Impact Studies, on file in the South Berwick Planning Office, and prepared by a Professional Engineer, for large developments or for those in heavy traffic areas to include but not be limited to:

- [1]** The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels;
  - [2]** The projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed use of the site;
  - [3]** The impact of this traffic upon existing abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall be given;
  - [4]** Any impacts on pedestrian movements in areas adjacent to the site.
- (p)** For new construction alterations to any existing building, a table containing the following information must be included:
    - [1]** area of building to be used for a particular use such as retail operation, restaurant, office, etc.
    - [2]** maximum number of employees

- [3] maximum seating capacity, where applicable; and
- [4] number of parking spaces existing and required for the intended use.

- (q) Elevations and plans at an appropriate scale for all exterior facades of the proposed structures and/or existing facades, plus additional plans and elevations, at a larger scale if required, showing design features and indicating the type and color of materials to be used. Streetscapes and historical structures shall also be shown.
- (r) Cost of the proposed development and evidence of financial capacity to complete it. This evidence should be in the form of a letter from a bank or other source of financing indicating the name of the project, amount of financing proposed, and interest in financing the project.

## E. Criteria and Standards

The following criteria and standards shall be utilized by the Planning Board in reviewing applications for site plan approval and shall serve as minimum requirements for approval of the site plan. Upon consideration of the factors listed below the Planning Board may attach such conditions in addition to those required elsewhere in this Ordinance, that it finds legally necessary to further the purposes of this Ordinance and section and to protect the long range health, safety and welfare of the Town. The standards are not intended to discourage creativity, invention and innovation. The Planning Board may waive the criteria presented in this section upon a determination by the Planning Board that the application of these criteria is not necessary to carry out the intent of this section. The Planning Board shall approve the site plan unless the plan does not meet the intent of one or more of the following criteria provided that the criteria were not first waived by the Planning Board.

- (1) **Access To The Site Is Safe and Adequate.** Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development. The Planning Board and applicant shall make this determination on the standards outlined in the South Berwick Planning Board's Submission Requirements for Traffic Impact Studies, if so required.
- (2) **Internal Vehicular Circulation.** The layout of the site shall provide for the safe movement of passenger, service and emergency vehicles throughout the site. The road network shall provide for vehicular and pedestrian safety, all season emergency access, snow removal and storage, and delivery and collection services.
- (3) **Pedestrian Circulation.** The development plan shall provide for a system of pedestrian circulation within the development. This system shall connect with existing sidewalks if they exist in the vicinity of the project. The system shall be designed to link residential units with recreational and commercial facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood.
- (4) **Preservation of Landscape.** The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, retaining existing vegetation where desirable and keeping any grade changes in character with the

general appearance of neighboring areas. The removal of roadside trees over five (5) inches in diameter shall be minimized. Where stone walls exist, care should be taken to disturb these as little as possible.

- (5) **Parking.** Parking shall conform to the Parking Standards outlined in Section 140-24 or 140-25 of this Ordinance.
- (6) **Screening.** Open storage areas, exposed machinery and outdoor areas used for the storage and collection of rubbish, must be visually screened from roads and surrounding land uses. The screening standards of Section 140-32 of this Ordinance shall apply. In addition, where fencing would create a continuous surface greater than ten (10) feet in length, the fence shall be softened visually with tree and shrub plantings.
- (7) **Relationship of Proposed Buildings To The Environment.** Proposed structures and developments shall be related harmoniously to the terrain and to existing buildings in the vicinity which have a visual relationship to the proposed building(s). Special attention shall be paid to natural features as slope, soils, scenic vistas, and drainage ways. Proposed structures and developments shall seek to establish relationships with adjoining open spaces, land uses, historic districts and other elements.
- (8) **Lighting.** Lighting must be controlled in both height and intensity to maintain rural and village character. The light source shall be shielded to prevent it from shining directly onto neighboring properties.
- (9) **Signage.** All signage shall conform to Section 140-26 (except as noted) of this Ordinance. The size, location, texture and lighting of all exterior signs and outdoor advertising features shall not detract from the layout of the property and the design of proposed buildings, structures and the surrounding properties and shall not constitute hazards to vehicles and pedestrians moving in or around the site.
- (10) **Water Supply.** The development shall be provided with a water supply that meets the State of Maine Standards for Drinking Water and provides for adequate fire protection based upon a review by the South Berwick Fire Chief. Evidence of the availability of service from the South Berwick Water District shall be provided, if appropriate. Water conservation measures, such as low flow toilets and water saving fixtures may also be required.
- (11) **Sewage Disposal.** Connection to the South Berwick Sanitary sewage system shall be made if available. Evidence of the availability of service from the Sewer District shall be provided if appropriate. If public sewage disposal is not feasible the Board may allow underground waste disposal systems to be used which shall be designed by a licensed site evaluator, in full compliance with the State of Maine Plumbing Code.

- (12) **Utilities.** Any utility installations above ground shall be located so as not to be unsightly or hazardous to the public and shall be landscaped or otherwise buffered so as to screen the components from public view.
- (13) **Water Quality.** The development shall not lower the existing water quality of on-site or adjacent rivers, streams, brooks, wetlands, ponds, lakes, or groundwater (refer to Section 4 of the South Berwick Comprehensive Plan.) Adequate provision shall be made for the storage and disposal of any hazardous or potentially harmful materials which may impact water quality, for uses in the Aquifer Protection District the standards of the Aquifer Protection Ordinance shall apply.
- (14) **Noise.** Noise generated by the development shall not exceed the standards as provided for in Section 140-28 of this ordinance.
- (15) **Dust, Fumes, Vapors, Gases, and Odors.** Emission of dust, dirt, fly ash, fumes, vapors or gases which could be injurious to human health, animals or vegetation; detrimental to the enjoyment of adjoining properties; or which could soil or stain persons or property, at any point beyond the lot line of the commercial or industrial establishment creating that emission shall be prohibited. In addition, no land use or establishment shall be permitted to produce harmful, offensive or bothersome odors, scents, or aromas perceptible beyond their lot lines, either at ground or habitable elevation. The location of all exhaust fans, vents, chimneys or any other sources discarding or emitting smoke, fumes, vapors, odors or aromas shall be shown on the plan.
- (16) **Waste Disposal.** The applicant shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. The Board shall consider the impact of particular industrial or chemical wastes or by-products and the ability of the applicant to dispose of such waste in conformance with State and Federal regulations. The Board may require the applicant to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation. Businesses are encouraged to submit a recycling plan. Adequate provision shall be made for the use of trucks to dispose of waste.
- (17) **Stormwater Run-Off.** Surface water run-off shall be minimized and detained on-site if possible or practicable. If it is not possible to detain water on-site, downstream improvements to the channel may be required of the developer to prevent flooding caused by his project. The natural state of watercourses, swales, floodways, or easements shall be maintained to the greatest extent possible. The Board may require vegetative buffers if conditions warrant. The design period is the 25-year storm. The Board may require the review and approval of the York County Soil Conservation Service (YCSCS) for any stormwater management plan.
- (18) **Erosion Control.** Erosion of soil and sedimentation of watercourses and water bodies shall be minimized by employing the "best management" practices as recommended by the Soil Conservation Service. The Board may require the review and approval of the YCSCS for any erosion control plan.

- (19) **Wildlife Habitat.** The use shall minimize any adverse impacts on spawning grounds, fish, aquatic life bird or other wildlife habitat. An opinion from the Maine Department of Inland Fisheries and Wildlife (IFW) may be required concerning special standards to be employed for wildlife habitat protection.

**F. Financial/Performance Guarantees**

- (1) At the time of approval of the application for site plan review, the Planning Board may require the applicant to tender either a certified check payable to the Town or a performance bond payable to the Town issued by a surety company in an amount adequate to cover the total costs of all improvements required by this chapter or by conditions imposed by the Planning Board, taking into account the time span of the bond and the effects of inflation upon costs. The conditions and amount of the certified check, irrevocable letter of credit or performance bond shall be determined by the Board with advice from the Town Manager.
- (2) Prior to the release of any part of or the entire performance guarantee, the Board shall determine to its satisfaction, in part upon the report of the engineer hired by the town to inspect the development and whatever other agencies and departments may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested. Any interest accumulated on an escrow account shall be returned with any money owed by the Town to the developer after it has been determined that the proposed improvements meet all design and construction requirements.
- (3) If the appointed engineer finds, upon inspection of the improvements, that they have not been constructed in accordance with plans and specifications filed by the applicant, he shall so report to the Board and Code Enforcement Officer. The Board Shall Notify the applicant and, if necessary, the bonding company or lending institution and take all necessary steps to preserve the Town's rights under the guaranty.
- (4) The Planning Board may require a maintenance bond of up to ten (10%) percent of the cost of all improvements required under this chapter, including but not limited to sidewalks, drainage facilities, parking areas, lighting, signs, landscaping and buffer areas. Such bond may extend for a period of up to two (2) years.
- (5) A certificate of occupancy shall not be issued until the Code Enforcement Officer has made a determination that all construction conforms to the site plan and conditions as approved by the Planning Board.

## **G. General Provisions**

- (1) **Professional Services.** The Planning Board may require that an expert consultant or consultants review one or more of the submissions of an application as to compliance or noncompliance with this ordinance and issued related to public health and safety, and advise, if necessary, of changes which will result in compliance. The applicant will bear the costs of this review, after the Board has set the scope of work, and the applicant and consultant have agreed, in writing, to a reasonable fee.
- (2) **Additional Studies.** The Planning Board may require the applicant to undertake any study which it deems reasonable and necessary to insure that the requirements of this ordinance are met. The costs of such studies shall be borne by the applicant.
- (3) **Expiration of Approvals.** A permit granted under this section shall expire if the work or change is not commenced within one year from the date the permit is granted, or if the work or change is not substantially completed within two years from the date the permit is granted, although such permit may be renewed for additional periods. Renewal of a permit shall be treated as a new application and shall be subject to all provisions of this ordinance.
- (4) **Construction in Accordance with Site Plan.** All construction, performed under the authorization of a building permit or certificate of occupancy issued for a development within the scope of this ordinance, shall be in conformance with the approved site plan.
- (5) **Appeals.** An appeal of a decision, condition or interpretation by the Planning Board must be taken to the Board of Appeals within thirty (30) days after the date of the Planning Board vote which effects the decision, condition or interpretation.

## **TABLES**

**TABLE A-LAND USE**

**TABLE B-DIMENSIONAL REQUIREMENTS**

**TABLE C-SHORELAND DIMENSIONAL REQUIREMENTS**

**TABLE A  
LAND USE**

<b>LAND USES</b>	<b>R1, R1A</b>	<b>R2, R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b>B1</b>	<b>B2</b>	<b>SP</b>	<b>RP</b>	<b>I1 (5)</b>
Accessory Apartment (5)	SP	SP	SP	SP	SP	SP	SP	N	N	SP
Adult Business Establishment	N	N	N	N	N	N	N	N	N	MSP
Agriculture-Livestock	Y*	Y*	Y	Y	Y	SP	SP	SP	SP	Y*
Agriculture-Non Livestock Nurseries, Greenhouses	SP	SP	Y	Y	Y	SP	SP	SP	N	Y
Amusement Center	N	N	N	N	N	MSP	MSP	N	N	N
Aquaculture	N	N	N	N	N	N	N	SP	SP	SP
Automobile Graveyards, Junkyards	N	N	MSP	MSP	N	N	N	N	N	N
Automobile Repair and Service	N	N	N	N	N	MSP	MSP	N	N	N
Banks	N	N	N	N	N	MSP	MSP	N	N	Y(6)
Bed & Breakfast	SP	SP	SP	SP	N	SP	SP	SP	N	N
Boat Landing	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Campgrounds	N	N	MSP	MSP	MSP	N	N	N	N	N
Cemeteries	Y	Y	Y	Y	Y	Y	Y	N	N	N
Church/Other Place of Worship/ Parish House/Rectory/Convent/ Other Religious Institutions	MSP	MSP	MSP	MSP	N	MSP	MSP	N	N	N
Clubs/Fraternal Organizations	SP	SP	SP	SP	N	SP	SP	N	N	SP
Cluster Housing & (1) Planned Unit Developments	MSP	MSP	MSP	MSP	MSP	MSP	MSP	MSP	N	MSP
Commercial Center	N	N	N	N	N	MSP	MSP	N	N	N
Commercial Complex	N	N	N	N	N	MSP	MSP	N	N	MSP
Commercial Recreation (2) incl. Indoor Recreation Facilities	MSP	MSP	N	N	N	MSP	MSP	N	N	MSP
Community Living Arrangement	MSP	MSP	N	N	N	MSP	MSP	N	N	N
Congregate Housing	MSP	MSP	N	N	N	Y	Y	MSP	N	N
Day Care Center	MSP	MSP	MSP	MSP	N	MSP	MSP	N	N	MSP
Docks, Piers, Wharves (Temp)	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*
Docks, Piers, Wharves (Perm)	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Essential Services	Y	Y	Y	Y	Y	Y	Y	SP	SP	Y
Extractive Industry & Processing	N	N	MSP	MSP	N	N	N	N	N	MSP
Family Day Care	Y*	Y*	Y*	Y*	Y*	Y*	Y*	SP	N	Y*
Forest Management Activities	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Hazardous Waste Disposal Facil.	N	N	N	N	N	N	N	N	N	N
Hotel/Motel	N	N	N	N	N	MSP	MSP	N	N	N
Individual Private Camps/sites	N	N	Y*	Y*	Y*	N	N	SP	SP	Y
Industrial Facilities	N	N	N	N	N	N	N	N	N	MSP
Kennels	N	N	MSP	MSP	N	N	N	N	N	N

<b>LAND USES</b>	<b>R1, R1A</b>	<b>R2, R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b>B1</b>	<b>B2</b>	<b>SP</b>	<b>RP</b>	<b>I1 (5)</b>
Landfills	N	N	N	N	N	N	N	N	N	N
Major Home Occupations	SP	SP	SP	SP	N	Y	Y	N	N	Y
Manufactured Homes (5)	Y	Y	Y	Y	Y	Y	Y	SP	N	Y
Marina	MSP	MSP	MSP	MSP	MSP	MSP	MSP	MSP	MSP	N
Minor Home Occupation	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	N	Y*
Mobile Home Park (1) must be on water & sewer	MSP	MSP	MSP	N	N	MSP	MSP	N	N	MSP
Multi-Family Dwellings (3)& (5)	MSP	MSP	MSP	N	N	MSP	MSP	N	N	MSP
Municipal Solid Waste Transfer	MSP	MSP	N	N	N	N	N	N	N	N
Neighborhood Convenience Store	MSP	MSP	MSP	MSP	N	MSP	MSP	N	N	N
Professional Administrative Offices	N	N	N	N	N	MSP	MSP	N	N	MSP
Non-Hazardous Solid Waste Processing Facility	N	N	N	N	N	N	N	N	N	MSP
Nursing Homes/Health Care Facility	N	N	N	N	N	MSP	MSP	N	N	MSP
Official Business Directional Signs	N	N	N	N	N	N	N	N	N	N
On-premises Signs	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*
Public Park	Y	Y	Y	Y	Y	Y	Y	SP	SP	Y
Public Recreational Facilities/ Libraries/Museum/Civic Centers/ Post Offices	MSP	MSP	MSP	MSP	MSP	MSP	MSP	MSP	N	MSP
Public Utilities, Sewer Collection/ Treatment Facilities	MSP	MSP	MSP	MSP	N	MSP	MSP	MSP	MSP	MSP
Restaurant (2)	MSP	MSP	MSP	MSP	N	MSP	MSP	MSP	N	MSP
Retail	N	N	N	N	N	MSP	MSP	N	N	Y(6)
Schools Public/Private/Parochial	MSP	MSP	MSP	MSP	N	MSP	MSP	N	N	MSP
Seasonal Sale of Produce & Plants Grown Locally	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Service/Personal Service Estab.	N	N	N	N	N	MSP	MSP	N	N	Y(6)
Single Family Dwelling (5)	Y	Y	Y	Y	Y	Y	Y	SP	N	Y
Sludge Spreading (4)	N	Y	Y	Y	Y	N	N	N	N	N
Take Out Restaurant	N	N	N	N	N	MSP	MSP	N	N	Y(6)
Timber Cutting	SP	Y*	Y*	Y*	SP	N	N	SP	SP	SP
Transmission Tower	N	N	SP	SP	N	N	N	N	N	SP
Two Family Dwellings (5)	Y	Y	Y	Y	Y	Y	Y	SP	N	Y
Vehicle Sales	N	N	N	N	N	MSP	MSP	N	N	MSP
Veterinary Services	N	N	MSP	MSP	N	N	N	N	N	MSP
Warehousing	N	N	N	N	N	MSP	MSP	N	N	MSP
Wholesale Distribution	N	N	N	N	N	MSP	MSP	N	N	MSP
Yard Sales	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

## TABLE A LAND USE INDEX

- (1) Also requires Subdivision Review under the South Berwick Subdivision Ordinance.
- (2) Within the R1 and R2 Districts must have frontage on Route 236 or Route 4.
- (3) May require Subdivision Review. Consult Town Subdivision Ordinance.
- (4) Requires review by the Maine DEP.
- (5) Once water and sewer front a given property in the Industrial Zone, no residential uses will be allowed on that piece of property.
- (6) These uses will only be allowed when part of a commercial complex as defined.

### KEY

Y	Permitted
Y*	Permitted with Special Use Permit obtained from Code Enforcement Officer
SP	Minor Site Plan Review Required
MSP	Major Site Plan Review Required
N	Not Permitted

**TABLE B  
DIMENSIONAL REQUIREMENTS**

	<b>R1</b>	<b>R1A</b>	<b>R2</b>	<b>R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b>B2</b>	<b>I</b>
<b>RESIDENTIAL MINIMUM LOT SIZE (square feet)</b>									
Without Sewer	40,000	80,000	40,000	80,000	80,000	120,000	120,000	40,000	80,000
With Sewer	10,000	20,000	30,000	40,000	80,000	120,000	120,000	10,000	80,000
<b>COMMERCIAL MINIMUM LOT SIZE (square feet)</b>	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(2)	80,000
<b>MINIMUM STREET FRONTAGE (feet)</b>									
Without Sewer	100	200	125	200	200	300	300	100	200
With Sewer	100	125	125	150	200	300	300	100	200
<b>MINIMUM YARD DIMENSIONS (feet)</b>									
Front Setback	20	50(4)	25	50(5)	50	50	50	20	75
Side Setback	15	25	25	25	25	50	50	15	35
Rear Setback	15	25	25	25	25	50	50	15	35
<b>LOT COVERAGE (%)</b>	30	30	25	25	20	20	15	50	60
<b>HEIGHT LIMITATION (feet) see footnote (16) &amp; (17)</b>	35	35	35	35	35	35	35	35	35

## **TABLE B**

### **DIMENSIONAL REQUIREMENTS INDEX**

- (1) Commercial dimensional requirements in these districts shall be the same as for residential lots.
- (2) For the B2 Zone a commercial use must contain a minimum of 10,000 square feet if on sewer and 20,000 square feet without sewer. Other dimensional requirements shall remain the same as for residential uses.
- (3) There are no dimensional requirements in the B1 zone except for height which shall be the same as the B2 zone.
- (4) If on sewer in the R1A zone the setbacks shall be; front – 20 feet; side – 15 feet; rear – 20 feet.
- (5) If on sewer in the R2A zone the setbacks shall be; front – 25 feet; side – 20 feet; rear – 20 feet.
- (6) No portion of any lot created after the effective date or amendment of this chapter and lying within the Resource Protection District may be used to meet the dimensional requirements of other districts in which the remainder of the lot is situated.
- (7) If more than one principal building is constructed on a single parcel of land, all dimensional requirements shall be met separately for each principal building. The minimum lot size shall be multiplied by the number of dwelling units on the lot.
- (8) New building lots located at the end of cul de sacs or along curves in a street may be designated so that they have at least sixty (60) feet of street frontage along the front lot line, so long as lot width at the location where the principal building is to be constructed is at least equal to the distance normally required for lot frontage in the zoning district and provided the radius of the curve is not more than three hundred (300) feet measured at the front lot line.
- (9) Driveways and parking areas may be located within any required setback area (except as noted in Section 140 – 24,) but shall not be located within six (6) feet of the side or rear lot lines in all zones but the B1 zone.
- (10) Additions to non conforming buildings may be built to meet the line of existing non conformity, but may not be less than ten (10) feet from a side or rear property line.
- (11) All setbacks shall be measured from the property line to the nearest part of a building.

- (12) The depths of any yard abutting a public road shall conform to the front yard requirements.
- (13) All corner lots shall be kept free from visual obstruction for a distance of twenty five (25) feet measured along both street center lines.
- (14) Where a proposed structure is abutted on both sides by existing structures whose front setbacks are less than the required setback, the setback of the proposed structure may be reduced to that of the abutting structures.
- (15) An industrial use that is permitted under the provisions of this chapter may reduce its side and rear yard setbacks to a point that abuts a railroad tract or spur track.
- (16) These height requirements shall not apply to farm buildings, flagpoles, chimneys, ventilators, domes, water towers, church towers, tanks, windmill towers, or other structures or building accessory features usually erected at a height greater than the main roofs of building, provided that such structure or accessory feature is not for human habitation or occupancy and further provided that any structure or accessory feature higher than thirty five (35) feet is set back from all property lines a distance equal to its height. Special height requirements shall be reviewed by the Planning Board under Site Plan review.
- (17) The Board may increase the height of an industrial structure to a maximum of fifty five (55) feet upon a clear demonstration that this increase is required by the applicant due to the unique circumstances of the operation.

**TABLE C**  
**SHORELAND DIMENSIONAL REQUIREMENTS**

<b>RESIDENTIAL</b>					
<b>Minimum Lot Size Requirements (square feet)</b>	<b>R1</b>	<b>R2</b>			
Tidal	30,000 (2)	30,000 (2)			
Non - Tidal	40,000	40,000			
<b>Shore Frontage</b>	<b>R1 &amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>
Tidal	150	150	200	200	200
Non - Tidal	200	200	200	200	200
<b>Setbacks For Structures</b>	<b>R1 &amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>
For Water Bodies Listed Under Section 140 - 12 A (1)	250 feet (3)	250 feet (3)	250 feet (3)	250 feet (3)	250 feet (3)
For Water Bodies Listed Under Section 140 - 12 B (1 - 4) Shoreland / Slope	100 feet	100 feet	100 feet	100 feet	100 feet
<b>Maximum Lot Coverage</b>	<b>R1 &amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>
As Defined	20%	20%	20%	20%	20%

**TABLE C**  
**SHORELAND DIMENSIONAL REQUIREMENTS**  
(continued)

<b>COMMERCIAL</b>						
<b>Minimum Lot Coverage</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>
Tidal	Same as Table B	40,000 square feet	40,000 square feet	40,000 square feet	40,000 square feet	40,000 square feet
Non - Tidal	Same as Table B	40,000 square feet	60,000 square feet	60,000 square feet	60,000 square feet	60,000 square feet
<b>Shore Frontage</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>
Tidal	Same as Table B	200 feet	200 feet	200 feet	200 feet	200 feet
Non - Tidal	Same as Table B	300 feet	300 feet	300 feet	300 feet	300 feet
<b>Setbacks For Structures</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>
For Water Bodies Listed Under Section 140 - 12 (1)	25 feet	200 feet	200 feet	200 feet	200 feet	200 feet
For Water Bodies Listed Under Section 140 - 12 (1 - 4) Shoreland / Slope	25 feet	300 feet	300 feet	300 feet	300 feet	300 feet
<b>Maximum Lot Coverage</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>
As Defined	70%	20%	20%	20%	20%	20%

**TABLE C**  
**SHORELAND DIMENSIONAL REQUIREMENTS INDEX**

- (1) Minimum lot sizes for all other districts shall remain the same as shown in Table B.
- (2) If lot is served by on – site septic the minimum lot size shall be 40,000 square feet.
- (3) For permitted uses in the Resource Protection District the setback for structures is 100 feet.

## **APPENDIX A PRIVATE ROADS**

### **Definition**

Private Road means a road which is not located in an approved subdivision and which is privately maintained. It shall be on the same level of hierarchy as a residential street except a lesser design standard may be allowed.

#### **(1) Service Restrictions**

Private roads are permitted only under the following circumstances:

- (a) There shall be no more than 5 (five) dwelling units on a private road.
- (b) All private roads must be paved.
- (c) No parking shall be provided for, or permitted within the right-of-way.
- (d) A private road shall not be maintained by the Town until the road is brought up to the relevant residential street standards in effect at the time and then accepted by the Town Council.
- (e) A maintenance agreement for the care and upkeep of the private road shall be provided to the C.E.O.
- (f) A private road may not connect to another private road if the total number of dwelling units served by the two private roads exceeds (5) five dwelling units.
- (g) All lots in a development served by a private road shall be deed restricted from further division and receiving road maintenance services (including, but not limited to, snowplowing, drainage, grading, etc.) Until the private road is built to the standards of a residential access street and accepted by the South Berwick Town Council.

#### **(2) Private Road Length**

Maximum length shall not be limited

#### **(3) Travelway Width and Shoulders**

- (a) Private roads shall provide a minimum width of (16) sixteen feet of paved surface.
- (b) All private roads shall be furnished with (2) foot wide stabilized shoulders on both sides of the paved surface.

#### **(4) Engineering Criteria**

- (a) Minimum grade: 0.5%
- (b) Maximum grade: 8%
- (c) Maximum grade within (50) fifty feet of intersection: 5%

**(5) Bases / Sub-base**

- (a) The Aggregate Sub-base Course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a (3) three inch square mesh sieve shall met the following grading requirements:

<b>SIEVE DESIGNATION</b>	<b>SQUARE MESH SIEVES</b>
1/4 INCH	25 - 70%
NO. 40	0 - 30%
NO. 200	0 - 7%

Aggregate for the sub-base shall contain no particles of rock exceeding six inches in any dimension.

- (b) If the Aggregate Sub-base Course is found to be not fine-gradable because of larger stones, then a minimum of three inches of Aggregate Base Course shall be placed on top of the sub-base course. The Aggregate Base Course shall be screened or crushed gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part the passes a 3 inch square mesh sieve shall meet the following grading requirements.

<b>SIEVE DESIGNATION</b>	<b>SQUARE MESH SIEVES</b>
1/2 INCH	45 - 70%
1/4 INCH	30 - 55%
NO. 40	0 - 20%
NO. 200	0 - 5%

Aggregate for the base shall contain no particles of rock exceeding two inches in any dimension.

<b>STREET MATERIAL</b>	<b>PRIVATE STREETS</b>
Aggregate Subbase Course (Max, sized stone 6")	
Without base gravel	15"
With base gravel	12"
Crushed aggregate base course	3"

<b>HOT BITUMINOUS PAVEMENT</b>	
Total Thickness	3"
Surface Course	1"
Base Course	2"

**(6) Inspection by Professional Engineer**

All Private Roads shall be inspected by a registered professional and certified by that engineer that the road meets the above requirements.

**South Berwick Zoning Ordinance**  
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