

**PROPOSED AMENDMENTS TO TOWN OF FALMOUTH ZONING ORDINANCE
PERTAINING TO SHORELAND ZONING**

Draft as Recommended by the Long-Range Planning Advisory Committee on March 26, 2009

SECTION 2: DEFINITIONS (NOTE: Some of the amendments in section 2 are also part of the Natural Resource Amendments Package, which is yet to be finalized. They have been listed here for sake of completeness.)

Designated Great Pond, River, Saltwater Body, Stream or Wetland: A water body or area of land represented on the Official Zoning Map and subject to regulation under various provisions of Section 7 Shoreland Zoning of this Ordinance (~~applies to Shoreland Zoning, Section 7~~). [Adopted 5/27/92]

Dwelling Unit: A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units. One or more habitable rooms designed or intended for the use of one or more individuals living together as a family, with cooking, living, sanitary and sleeping facilities. ~~All dwelling units must contain a minimum of 600 sq. ft. of floor area.~~

Foundation: The supporting substructure of a building or other structure (excluding wooden sills and post supports in the Shoreland Zone and notwithstanding provisions in the FEMA Coastal Construction Manual), including ~~but not limited to~~ basements, slabs, sills, posts or frost walls, or other base consisting of concrete, block, brick or similar material. [Adopted 5/27/92]

Frontage, Shore: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation (~~applies to Section 7 Shoreland Zoning, Section 7~~). [Adopted 5/27/92]

Great Pond: Any inland body of water which in a natural state has a surface area in excess of ten (10) 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~~ (~~applies to Shoreland Zoning, Section 7~~). [Adopted, 5/27/92]

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. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. In the case of coastal wetlands ~~or wetlands adjacent to rivers or Highland Lake,~~

the normal high-water line is considered to be the upland edge of the wetland, and not the edge of the open water (applies to Section 7 Shoreland Zoning, Section 7). [Adopted, 5/27/92]

- Stream:** A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which has two (2) or more of the following characteristics.
- It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey seven-and-one-half (7.5) minute series topographic map or, if that is not available, a fifteen (15) minute series topographic map.
 - It contains, or is known to contain, flowing water continuously for a period of at least six (6) months of the year in most years.
 - The channel bed is primarily composed of mineral material such as sand and gravel, parent material, or bedrock that has been deposited or scoured by water.
 - The channel contains aquatic animals such as fish, aquatic insects, or mollusks in the water or, if no surface water is present, within the stream bed.
 - The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

Stream does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale, is characterized by the lack of upland vegetation or 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 (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

Wetlands: ~~See wetland, coastal; wetland, forested; wetland, freshwater; wetland, inland; and wetland of special significance. Areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. The boundary of a wetland is drawn around those areas that meet all three of the following criteria; a prevalence of wetland plants, hydric soils, and evidence of saturation or flooding (applies to Shoreland Zoning, Section 7).~~ [Adopted, 5/27/92]

Wetland, Coastal: ~~All land with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat, including salt marshes and salt meadows, and any swamp, marsh, or bog which is subject to tidal action (applies to Shoreland Zoning, Section 7).~~ [Amended, 5/27/92] All tidal and subtidal land; an area with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; or any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables, published by the National Ocean Service. A coastal wetland may include portions of a coastal sand dune.

Wetland, Forested: A freshwater wetland dominated by woody vegetation that is twenty (20) feet tall or taller (applies to Section 7 Shoreland Zoning, Section 7). [Adopted, 5/27/92]

Wetland, Freshwater: A swamp, marsh, bog, and similar area that is inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances does support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and is not considered part of a great pond, coastal wetland, or stream.

Wetland of Special Significance: All coastal wetlands and great ponds are considered wetlands of special significance. In addition, a freshwater wetland which has one (1) or more of the following characteristics is considered a wetland of special significance.

- a. Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled or imperiled, as defined by the Maine Natural Areas Program.
- b. Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat.
- c. Location near a coastal wetland. The freshwater wetland is located within two hundred fifty (250) feet of a coastal wetland.
- d. Location near a great pond. The freshwater wetland is located within two hundred fifty (250) feet of the normal high water line and within the same watershed of any lake or pond classified as a great pond.
- e. Aquatic vegetation, emergent marsh vegetation, or open water. The freshwater wetland contains, under normal circumstances, at least twenty thousand (20,000) square feet of aquatic vegetation, emergent marsh vegetation, or open water, unless the twenty thousand (20,000) or more square foot area is the result of an artificial pond or impoundment.
- f. Wetland subject to flooding. The freshwater wetland area is inundated with floodwater during a one hundred (100) year flood event based on flood insurance maps produced by the U.S. Federal Emergency Management Agency or other site-specific information.
- g. Peatland. The freshwater wetland is or contains peatlands, except those that the Maine Department of Environmental Protection determines as previously mined peatland, or portion thereof, is not a wetland of special significance.
- h. Stream. The freshwater wetland area is located within twenty-five (25) feet of a stream, whether or not it is immediately adjacent.

SECTION 6. NONCONFORMING STRUCTURES, USES AND LOTS

- 6.1** A nonconforming structure, use, or lot is permitted to continue as it existed prior to the date such structure, use, or lot became nonconforming under the provisions of this Ordinance, as amended.
- 6.2** Except as provided in this subsection, a nonconforming structure or use shall not be extended or enlarged in any manner except as may be permitted as a variance. The following requirements shall apply to expansion or enlargement of structures which are nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height or setback requirements. [Amended 1/24/00]
- a. The Board of Zoning Appeals may permit as a conditional use in accordance with Sections 8.3 and 8.7 the extension or enlargement of a single family detached dwelling which is nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height, or setback requirements, provided the extension or enlargement is not located between the lot lines and the required setback lines and does not compound nor create a lot coverage or height violation. [Amended 10/25/04; 7/24/06]
 - b. The Board of Zoning Appeals may permit as a conditional use in accordance with Section 8.3 and 8.7, the extension or enlargement of a single family detached dwelling which is nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height or setback requirements, provided the extension or enlargement [Amended, 10/25/04]:
 - (1) Shall not increase lot coverage above 50%; and,
 - (2) Shall not extend closer to the lot lines than the existing structure; and,
 - (3) Shall not create or compound a violation of the height restrictions in Section 5.20. [Amended 7/24/06]
 - (4) No part of the extension or enlargement (of a single family detached dwelling) may be closer than ten (10) feet from all property lines and twenty (20) feet from buildings on any adjoining lot.
 - c. The Board of Zoning Appeals may permit as a conditional use in accordance with Section 8.3 and 8.7, the extension or enlargement of a multiplex dwelling unit subject to the following requirements [Amended, 10/25/04]:
 - (1) No part of the extension or enlargement of a multiplex dwelling unit may be closer than twenty (20) feet from all property lines and thirty (30) feet from buildings on any adjoining lot.
 - (2) If the multiplex dwelling to be enlarged is in the condominium or unit owner form of ownership, the Board of Zoning Appeals may approve the extension or enlargement only of a limited common element or area and only after such extension or enlargement has been approved by the condominium association or association of unit owners in accordance with

the provisions of the Maine Condominium Act or Unit Ownership Act, as the case may be, and with applicable bylaws of the association.

- (3) The applicant for the extension or enlargement of a multiplex dwelling unit shall provide notice of the application and the Board of Zoning Appeals' hearing thereon to the owners of dwelling units which are attached to the unit proposed to be extended or enlarged. [Amended 1/24/00]
- d. A structure other than a single family detached dwelling or a multiplex dwelling unit which is nonconforming due to lot size, lot width, lot frontage, lot coverage, height or setback requirements, may be expanded or enlarged subject to Planning Board Site Plan Review, provided that the extension or enlargement is not located between the lot lines and the required setback lines, and does not compound nor create a lot coverage or height violation. [Amended, 1/24/00]

Any single family detached dwelling located in the Suburban-Business District, Commercial District, or the Business and Professional District, which is nonconforming solely because of its use, may be expanded or enlarged in accordance with the preceding requirements. [Amended, 12/22/86]

- 6.3** Once converted to a conforming structure, use, or lot, no structure, use, or lot shall revert to a nonconforming status.
- 6.4** The change of a use, which is nonconforming because it is not allowed either as a permitted or conditional use in the district in which it is located, to another nonconforming use may be permitted by the Board of Zoning Appeals as a conditional use subject to the requirements of subsection 8.3 and 8.7, and after finding by the Board that the proposed use will be an improvement over the prior use in terms of the standards set forth in subsections 8.3 and 8.7.
- 6.5** Replacement of Destroyed or Damaged Nonconforming Structures [Amended, 10/25/04]
 - a. Any nonconforming structure or portion thereof that is unintentionally damaged or destroyed by accident or by malicious acts of persons other than the property owner shall only be rebuilt or replaced subject to the requirements of this subsection:
 - (1) For nonconforming structures located outside of the Shoreland Zone, the destroyed or damaged structure may be replaced or rebuilt with approval of the Zoning Board of Appeals, provided that the exterior dimensions of the reconstruction are no larger than the dimensions of the structure prior to the destruction or damage. Damaged or destroyed structures that are rebuilt under this subsection shall not be subject to the provisions of the Zoning Ordinance for lot size, lot width, lot frontage, lot coverage, or height limitations, but the new structure shall be placed on the lot such that the setback requirements are met to the greatest extent practical, even if this means that a new foundation must be installed.
 - (2) As required by state law, for nonconforming structures located in the Shoreland Zone a determination of the extent of damage shall be made to ascertain that the structure has been damaged to the extent of more than fifty (50%) percent of its value prior to the destruction or damage, and in making the determination of

moving the building to meet setbacks to a water body, tributary stream or wetland to the greatest practical extent, the Board shall consider the following factors:

- i. The size of the lot;
- ii. The slope of the land;
- iii. The potential for soil erosion;
- iv. The location of other structures on the property or on adjacent properties;
- v. The location of the septic system, if any, and other on-site soils suitable for septic system replacement;
- vi. The type and amount of vegetation to be removed to accomplish the relocation; and,
- vii. The type and condition of any foundation which may have been part of the original structure.

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

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

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

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

(4) Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be

reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

- b. Nothing in this provision shall prevent a property owner from taking temporary measures to protect a nonconforming structure or portion thereof, which is unintentionally damaged or destroyed, from further damage.
- c. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 6.11.a, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 6.5.a.3 above.

- 6.6** If a nonconforming use or the use of a nonconforming structure or lot is discontinued for twelve (12) consecutive months, such use shall no longer be permitted.
- 6.7** A nonconforming single vacant lot, not adjoined by another vacant lot in common ownership, may be built upon subject to the lot coverage and setback requirements of this Ordinance for the district where located, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicle and provided that the owner has conditional use approval from the Board of Zoning Appeals. For purposes of this Section 6.7, the term “vacant lot” shall mean a nonconforming lot that was vacant on and has remained vacant since the effective date of this Zoning Ordinance in 1965. [Amended 10/25/04; 7/24/06]
- 6.8** Two or more nonconforming vacant adjoining lots in common ownership shall be consolidated to form one or more lots conforming so far as possible to the lot area and width requirements of this Ordinance. If possible, the lots shall be consolidated so that no nonconforming lot or lots are formed. The lot or lots so formed may be built upon as a matter of right, subject to the lot coverage and setback requirements of this Ordinance for the district where located, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicle.
- 6.9** The owner or owners of a nonconforming lot shall apply to the Board for a conditional use to relocate or tear down either wholly or partially a dwelling or dwellings located thereon and build or replace the same in whole or in part. As a condition to applying for such a conditional use, the lot must be consolidated with any adjoining lot or lots in common ownership and not occupied by a dwelling, to form one or more lots conforming so far as possible with the lot area and width requirements of this Ordinance. The Board may grant the conditional use only if the following additional criteria are met: [Amended, 5/27/92; 7/24/06]
 - a. The reconstructed dwelling shall be used as a single family detached dwelling;
 - b. The lot coverage shall not exceed fifty (50%) percent;

- c. A minimum setback of ten (10) feet from all lot lines shall be maintained;
 - d. The reconstruction shall be no closer than twenty (20) feet to other buildings on any adjoining lot; and
 - e. There are provided two off-street parking spaces for each dwelling unit.
- 6.10** A non-conforming structure which is accessory to a single family detached dwelling may be rebuilt within the existing footprint without a variance provided that the structure is not extended or enlarged in any manner; that the structure, as rebuilt, complies with all applicable fire safety codes; and that conditional use approval is obtained from the Board of Zoning Appeals. [Adopted, 5/27/93] [Amended 7/24/06]
- 6.11** In addition to the prior sections dealing with non conforming structures, the following provisions shall apply to the expansion of nonconforming structures located in the Shoreland Zone subject to conditional use approval by the Board of Appeals [Adopted, 5/27/92]:
- a. If any portion of a structure or an attached accessory structure is less than the required setback from the normal high-water line of a water body or tributary stream or upland edge of a designated wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during its lifetime. If a replacement structure conforms with the requirements of Section 6.5, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date. [Amended 5/28/96]
 - Construction or enlargement of a foundation beneath an existing structure need not be considered in the area or volume of expansion provided that the space within that foundation meets the definition of a cellar.
 - b. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Board of Zoning Appeals or its designee, basing its decision on the criteria specified in Section 6.5.a.2. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 6.11.a, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
 - c. Notwithstanding the height restriction of Section 6.2 b.(3), in the Residential "B" portions of the Shoreland Zone around Highland Lake, a foundation may be constructed under an existing structure [Amended, 5/27/93].
 - d. No structure which is less than the required setback from the normal high-water line of a water body or the upland edge of a designated wetland shall be expanded toward the water body or wetland.

SECTION 7. SHORELAND ZONING

7.1 Purposes

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

7.2 Authority

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

7.23 Applicability

- a. The Shoreland Zone includes and applies only to those land areas:
 - 1) Within two hundred and fifty (250) feet, horizontal distance, of the normal high water line of any designated great pond, river, or salt water body; or,
 - 2) Within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, or of a non-forested, fresh water wetland of ten (10) or more contiguous acres; or,
 - 3) Within one hundred (100) feet, horizontal distance, of the normal high water line of any designated stream or brook.
 - 4) Flood plains along rivers, as defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils, or other site-specific information.
- b. The provisions of the zone also apply to any structure built on, over, or abutting a dock, wharf, pier, or other structure extending ~~beyond~~ below the normal high-water line of a water body.
- c. The provisions of the shoreland zone shall apply where applicable, in addition to any other provisions of this ordinance.

7.20 7.4 Conflicting Regulations

The shoreland districts shall overlay the districts described in Section 3, and notwithstanding any other provision of the Ordinance, no use shall be allowed in a shoreland district which is not allowed as a permitted use or approved as a conditional use in the applicable underlying zone. Where a Shoreland Zone regulation appears to be in conflict with any other state or local rule, regulation, statute or restriction, the more restrictive requirement shall have precedence.

7.21 7.5 Permits Required

No person shall engage in any use of land requiring a permit in the district in which it would occur, or expand or change an existing nonconforming use, or renew a discontinued use or convert a seasonal dwelling to a year-round dwelling occupied on a year-round basis as the principal dwelling place of the occupant, without first obtaining a permit.

7.22 7.6 Permit Application

Applications for permits shall be submitted in accordance with requirements of the Community Development Department.

7.23 7.7 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 permit for such facilities has been secured by the applicant, or his authorized agent, in accordance with the requirements of this Ordinance.

7.26 7.8 Permits Issued by Planning Board

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

- a. will not result in unsafe and unhealthful conditions;
- b. will not result in water pollution, erosion, or sedimentation to surface waters;
- c. will adequately provide for the disposal of all wastewater;
- d. will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- e. will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- f. will protect archaeological and historic resources as designated in the Comprehensive Plan;
- g. will avoid problems associated with flood plain development and use; and
- h. is in conformance with the Land Use Standards of Section 7.

7.9 Special Exceptions. In addition to the criteria specified in Section 7.8 above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

- (1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- (3) All proposed buildings, sewage disposal systems and other improvements are:

- (a) Located on natural ground slopes of less than 20%; and
- (b) Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

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

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

7.28 7.10 Expiration of Permit

Following the issuance of a permit, if no substantial start is made in construction or in the use of the property within one year of the date of the permit, the permit shall lapse and become void.

7.311 Districts and Zoning Map

Official Shoreland Zoning Map - The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map which is made a part of this Ordinance:

- 1) Resource Protection
- 2) Limited Residential
- 3) Limited Commercial
- 4) Stream Protection

7.412 Interpretation of District Boundaries

The Boundaries of the Shoreland Zone exist by reference to the definition set forth in Section 7.23. The Official Zoning Map is intended to be as precise as reasonably may be determined with respect to showing the Shoreland Districts referred to in Section 7.311 herein. Where uncertainty exists as to exact location of District boundary lines, the Planning

Board shall be the final authority as to location. ~~In making site specific determinations of boundary lines, the Planning Board will consider information submitted per Section 7.29.~~

7.513 Establishment of Districts

a. Resource Protection District

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed need not be included within the Resource Protection District.

- 1) ~~Areas within one hundred (100) feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 1, 1973.~~ Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006.
- 2) Flood plains along rivers, as defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils. This district shall also include 100 year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- 3) Areas of two (2) or more contiguous acres with sustained slopes of twenty (20%) percent or greater. In such areas, the boundary of the Resource Protection District shall extend a distance of fifty (50) feet, horizontal distance, beyond the top of slope moving away from the water body. Small areas of slopes less than twenty (20%) percent may be included where there is a consistent and well defined top of bank, or where such areas are completely surrounded by steeper slopes.
- 4) Any forested or non-forested wetland area of two (2) or more contiguous acres falling within the 250 foot limit of the shoreland zone, which is not surficially connected to a water body during normal spring high water.
- 5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

- 6) ~~The Resource Protection District may also include areas of importance in conserving sites of significant scenic value, areas designated by federal, state, or municipal government as unique natural areas, and other significant areas which should be included to fulfill the purposes of shoreland zoning.~~

~~Special Resource Protection is required along the Presumpscot River and Mill Creek because of the presence of multiple natural resources and because of development pressures.~~

~~The steep slope areas, as determined in subsection 3) above, along the Presumpscot River between the Middle Road and the Piscataqua River warrant special protection for the following reasons:~~

- a) ~~Slopes in Excess of 20 Percent—Steep slope areas in general present a construction hazard and potential for severe erosion. Conditions along the Presumpscot are aggravated by the particular soils which are highly erodible.~~
- b) ~~Critical Natural Areas—The slopes along the Presumpscot contain the habitat of a rare plant species, the meadow onion. They also contain one of the few remaining stands of old growth forest in Falmouth. Both of these resources are officially identified in the Comprehensive Plan and the Open Space Plan.~~
- c) ~~Marine Wildlife Habitat—The shores of the tidal portions of the Presumpscot Estuary (up to Smelt Hill Dam) have been rated for National and State significance for shorebird feeding and roosting. During the fall and spring migrations, these are critical staging areas.~~
- d) ~~Designated Scenic Area—The slopes on both sides of the Presumpscot Falls Bridge have been officially designated as important scenic areas by the Open Space Plan. The forest border is intact over the entire length of the slopes within the river ravine, producing a special scenic character. A strip of land measuring 150 feet inland from the upland edge of the coastal wetland, or from the normal high water line if no wetland is present, along Mill Creek between Route 1 and Foreside Road warrants special protection as a unique natural area for the following reasons:~~
- e) ~~Steep Slopes—The slopes along Mill Creek present problems of erosion and sedimentation into the tidal wetland and creek.~~
- f) ~~Water Quality—The Route 1 side of Mill Creek is zoned for commercial development. The creek drains into Mussel Cove, an important recreational shellfish harvest area. Retaining a vegetative buffer between development and the creek is essential to maintain high water quality.~~

~~g) — Habitat Value — Mill Creek above Foreside Road is the only entirely undeveloped estuary in Falmouth. It is bounded by the Nature Conservancy and Town Forest Preserves. Inadequate buffering from development would dramatically impact the habitat value.~~

b. Limited Residential District

The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial District.

c. Limited Commercial District

The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District. This district includes areas of two (2) or more contiguous acres in size devoted to, or appropriate for, a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.

d. Stream Protection District

The Stream Protection District includes all land areas within one hundred (100) feet, horizontal distance, of the normal high-water line of a designated stream.

7.614 Table of Land Uses

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 7-7. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Yes: Allowed (no permit required)

No: Prohibited

PB Permit: Requires permit issued by the Planning Board

CEO Permit: Requires permit from the Code Enforcement Officer

BZA Permit: Requires permit from the Board of Zoning Appeals

SP: Stream Protection

RP: Resource Protection

LR: Limited Residential

LC: Limited Commercial

TABLE 1 - LAND USES IN THE SHORELAND ZONE

LAND USES (see note 1)	SP	RP	LR	LC
1. Forest management activities except for timber harvesting	yes	yes	yes	yes
2. Timber harvesting	yes	CEO	yes	yes
3. Clearing of vegetation for approved construction and other allowed uses	CEO	CEO	yes	yes
4. Mineral exploration	no	CEO	yes	yes
5. Emergency operations	yes	yes	yes	yes
6. Agriculture	yes	Yes CEO	yes	yes
7. Aquaculture	yes	PB	PB	yes
8. Principal structures and uses:				
A. One and two family residential	BZA	No PB (2)	CEO	CEO
B. Multi-unit residential	no	no	PB	PB
C. Commercial	no	no	no	PB
D. Industrial	no	no	no	no
E. Governmental and Institutional	no	no	PB	PB
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	BZA	PB	CEO	CEO
9. Structures accessory to allowed uses	BZA	PB	CEO	CEO
10. Piers, docks, wharves, bridges, and other structures and uses extending over or below the normal high-water line or within a wetland				
A. Temporary	PB	PB	CEO	CEO
B. Permanent	PB	PB	PB	PB
11. Conversions of seasonal residences to year-round residences	CEO	no	CEO	CEO
12. Private sewage disposal systems for allowed uses	CEO	CEO	CEO	CEO
13. Essential services	PB	PB	PB	PB
14. Public and private recreational areas involving minimal structural development	PB	PB	CEO	CEO
<u>15. Individual, private campsites</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>	<u>CEO</u>
16. Campgrounds	no	no	PB	PB
17. Road construction	PB	PB	PB	PB
18. Driveway construction	PB	PB	CEO	CEO
19. Parking facilities	PB no	PB no (3)	CEO	CEO
20. Marinas	no	no	PB	PB
21. Public Utilities, including sewage collection and treatment facilities	PB	PB	PB	PB
22. Filling and earthmoving of < 10 cubic yards	CEO	CEO	yes	yes
23. Filling and earthmoving of > 10 cubic yards	PB	PB	PB	PB
24. Uses similar to allowed uses	CEO	CEO	CEO	CEO
25. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
26. Uses similar to uses requiring a PB permit	PB	PB	PB	PB
26. Uses not specifically listed and not similar to listed uses require an interpretation from the Board of Zoning Appeals				

Note 1: Uses not specifically listed and not similar to listed uses require an interpretation from the Board of Zoning Appeals.

Note 2: Single family structures may be allowed by special exception only according to the provisions of Section 7.9 Special Exceptions. Two-family residential structures are prohibited.

Note 3: Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the Planning Board.

7.715 Land Use Standards

All land use activities within the shoreland zone shall conform to the land use standards contained in Sections 7.815 through 7.4831.

A. Minimum Lot Standards

	<u>Minimum Lot Area (sq. ft.)</u>	<u>Minimum Shore Frontage (ft.)</u>
<u>(1) (a) Residential</u>		
<u>(i) Within the Shoreland Zone Adjacent to Tidal Areas</u>	<u>30,000sq.ft./ dwelling unit</u>	<u>150</u>
<u>(ii) Within the Shoreland Zone Adjacent to Non-Tidal Areas</u>	<u>40,000 sq.ft./ dwelling unit</u>	<u>200</u>
<u>(b) Commercial per principal structure</u>		
<u>(i) Within the Shoreland Zone Adjacent to Tidal Areas</u>	<u>40,000 sq.ft.</u>	<u>200</u>
<u>(ii) Within the Shoreland Zone Adjacent to Non-tidal Areas</u>	<u>60,000 sq.ft.</u>	<u>300</u>
<u>(c) Public and Private Outdoor Recreational Facilities</u>		
<u>(i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas</u>	<u>40,000</u>	<u>200</u>
<u>(2) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.</u>		
<u>(3) The minimum width of any portion of any lot within two hundred (200) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.</u>		
<u>(4) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.</u>		

7.816 Agriculture

- a. 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 Soil and Water Conservation Commission in July, 1972. Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).~~

- b. Manure shall not be stored or stockpiled within seventy-five (75) feet, horizontal distance, of the normal high water line of a water body or the upland edge of designated wetlands.
- c. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the shoreland zone shall require a Soil and Water Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
- d. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of designated wetlands. Operations, including farmland that is fallow due to crop rotation normal to those operations, in existence on the effective date of this Ordinance and not in conformance with this provision may be maintained.
- e. ~~After the effective date of this amended Ordinance, n~~Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of designated wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions, may continue, provided that such grazing is conducted in accordance with a Soil and Water Conservation Plan.

7.917 Campgrounds

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

- a. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land below the normal high-water line of a water body or the upland edge of a designated wetland shall not be included in calculating land area per site.
- b. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a designated wetland.

7.1018 ~~Clearing of Vegetation for Approved Construction and Other Uses~~ Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

The upland area immediately adjacent to a water body is known as the "riparian zone." It functions to protect the water quality and wildlife values of the water body. Vegetation within riparian zones: 1) provides essential habitat for a diversity of wildlife species, 2) serves as a natural filtration system for nutrients, sediments, and other pollutants, 3)

maintains suitable water temperatures for aquatic life, and 4) provides food for a variety of fish and aquatic wildlife. Vegetative cover also stabilizes shorelines preventing erosion damage to property and deterioration of water quality. Finally, vegetation provides a visual screen between water uses and development. For all of these reasons, restrictions must be placed on the removal of vegetation on properties adjacent to waterbodies.

- a. ~~Within the shoreland area along the Presumpscot River zoned Resource Protection due to the presence of steep slopes or multiple natural resources, a buffer strip meeting the standards set forth in Section 7.1018.b. shall be maintained between the normal high water line of the waterbody and a line extending fifty (50) feet, horizontal distance, inland from the top of slope.~~

~~Within the Resource Protection District along Mill Creek, a buffer strip meeting the standards set forth in Section 7.1018.b shall be maintained within one hundred and fifty (150) feet, horizontal distance, of the upland edge of the coastal wetland or from the normal high water line if no wetland is present.~~

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

- b. In other shoreland districts, within a strip of land extending one hundred (100) feet, horizontal distance, of the normal high-water line of Great Ponds and seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of a designated wetland, a buffer strip of vegetation shall be preserved as follows:

- (+) 1) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree crown. However, a footpath not to exceed ~~ten (10)~~ six (6) 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 great pond, or designated stream flowing to a great pond, the width of the foot path shall be limited to six (6) feet.~~

- 2) 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 a great pond classified Great Pond Act or a river or stream flowing to a great pond classified Great Pond Act, shall be defined as maintaining a rating score of ~~12 or more in any 25 foot by 25 foot square (625 square feet)~~ 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system:

Diameter of Tree at 4 ½ feet above ground level (inches)	Points
2 – 4 inches	1
>4 – 8 inches	2
>8 – 12 inches	4
>12 inches	6-8

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

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

NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points (36- 24 =12) may be removed from the plot provided that no cleared openings are created.

The following shall govern in applying this point system:

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

For the purposes of Section 7.18.2.b "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 1/2) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been planted into the plot.

- 3) In order to protect water quality and wildlife habitat, ~~adjacent to great ponds, and designated streams which flow to great ponds,~~ existing vegetation under three (3) feet in height and other ground cover, including the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath as described in subsection 1) above.
- 4) Pruning of tree branches on the bottom 1/3 of the tree is ~~permitted~~ allowed.
- 5) In order to maintain a buffer strip of vegetation when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree

species unless existing new tree growth is present. Plantings must be sufficient to create a new forest canopy that will meet the requirements of Section 7.4018.b.2 within ten (10) years.

The provisions contained in this subsection b shall not apply to structures or uses which require direct access to the water as an operational necessity, such as public beaches, piers, docks, and retaining walls, nor to other functionally water dependent uses. Clearing of vegetation for structures or uses that require direct access to the water as an operational necessity shall be limited to the minimum amount necessary. Areas disturbed beyond these limits shall be replanted according to the requirements of this subsection.

- c. At distances greater than one hundred (100) feet, horizontal distance, of the normal high-water line of Great Ponds and seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of a designated wetland, cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, shall not exceed in the aggregate, twenty-five (25) percent of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously ~~developed~~ cleared.
- d. At distances greater than one hundred (100) feet, horizontal distance, of the normal high-water line of Great Ponds and seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of a designated wetland, removal of trees within areas not cleared for development shall be limited to forty (40) percent of the volume of trees four (4) inches or more in diameter, measured four and one-half (4 1/2) feet above ground level, in any ten (10) year period. For the purposes of these standards, volume may be considered equivalent to basal area.
- e. Legally existing nonconforming c~~Cleared openings legally in existence on the effective date of this amended Ordinance~~ may be maintained, but shall not be enlarged, except to remove safety hazards or as allowed ~~permitted~~ by this Ordinance.
- f. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

7.4119 Erosion and Sedimentation Control [Amended 9/22/03]

- a. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan according to Section 5.39.
- b. Natural and man-made drainage ways and drainage outlets shall be protected from erosion by 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.

7.4220 Mineral Exploration and Extraction

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface per acre. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitations.

All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of this section.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified Great Pond Act or a river flowing to a great pond classified Great Pond Act, or within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- (3) Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
 - (a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
 - (b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
 - (c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (4) In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

7.4321 Piers, Docks, Wharfs, Bridges and Other:

Structures and Uses Extending Over or Beyond Below the Normal High-Water Line of a Water Body or Within a Wetland

- a. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- b. The location shall not interfere with existing developed or natural beach areas.
- c. The facility shall be located so as to minimize adverse effects on fisheries.
- d. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
- e. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- f. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- ~~g-f~~ No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

NOTE: New pPermanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A., Section 480-C.

7.1422 Roads and Driveways

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

- a. Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified Great Pond Act or a river that flows to a great pond classified Great Pond Act, and one-hundred (100) feet, horizontal distance, from the normal high-water line of a waterbody or the upland edge of a designated wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet, horizontal distance, upon clear demonstration 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, stream, or wetland.

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

This paragraph shall neither apply to approaches to water crossings nor to roads nor driveways that provide access to permitted structures, nor to facilities located nearer to the shoreline due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this section except for that portion of the road or driveway necessary for direct access to the structure.

- b. Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body.
- c. 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 practicable from the normal high-water line of a designated water body, stream, or upland edge of a wetland.
- d. Road and driveway banks shall be no steeper than a slope of three (3) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 7.11.
- e. Road and driveway grades shall be no greater than ten (10) percent except for short segments of less than two hundred (200) feet, which shall be no greater than twelve (12) percent, unless the Planning Board approves a higher percentage if it finds that that is needed to minimize cuts and fills and maximize erosion control.
- f. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope in width between the outflow point of the ditch or culvert and the normal high-water line of a designated water body, stream, or upland edge of a wetland. ~~Road~~ Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- g. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow ~~in the road or ditch~~ gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:
 - 1) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

Road Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60

- 2) Drainage dips may be used in place of ditch relief culverts only where the road or driveway grade is ten (10) percent or less.
 - 3) 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 downslope from a line perpendicular to the centerline of the road or driveway.
 - 4) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
- h. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

7.4523 Septic Waste Disposal

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

NOTE: The Rules, among other requirements, include:

- 1) The minimum setback for new subsurface sewage disposal systems, excluding fill extensions, shall be no less than one hundred (100) feet, horizontal distance, from the normal high-water line of a perennial water body. The minimum setback distances from water bodies for new subsurface sewage disposal systems shall not be reduced by variance on vacant lots.
 - 2) Replacement systems shall meet the standards for replacement systems as contained in the Rules.
- b. Prior to the conversion of a seasonal dwelling to a year-round dwelling, the Code Enforcement Officer must determine that the existing septic system is capable of properly disposing of all wastes which would be generated by year-round use. If the Code Enforcement Officer determines that the existing septic facilities are not adequate, a new septic system shall be installed prior to, or in connection with, the proposed conversion.

7.1624 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, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, or commercial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals.

Certified persons may include Maine Certified Soil Scientists, Maine ~~Registered~~ Licensed Professional Engineers, Maine ~~State~~ Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

7.1725 Structures and Lots, Principal and Accessory

- a. Unless otherwise provided for in Section 7.15, no dwelling or other structure shall be erected except on a lot which meets the minimum lot size and other dimensional requirements established under Section 3 for the underlying district over which the applicable shoreland district is located.
- b. Land below the normal high-water line of a water body or upland edge of a designated wetland shall not be included toward calculating minimum lot area.
- c. Any lot abutting a great pond, river, designated stream, or tidal water shall have a minimum width at all points of two hundred (200) feet measured in a straight line between, or parallel to, a line between the points of the intersection of the side lot lines at the normal high water line.
- d. All structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a designated wetland. The water body or wetland setback provision shall neither apply to structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.
- e. For principal structures adjacent to coastal bluffs, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Licensed Professional Engineer, a Maine Certified Soil

Scientist, a Maine Certified Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Zoning Appeals.

- f. The ~~first~~ lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils. Accessory structures may be placed in accordance with the standards of the Floodplain Management Ordinance and need not meet the elevation requirements of this paragraph.
- g. The total footprint area of all structures, parking lots, and other non-vegetated surfaces within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, as located within the shoreland zone, including land area previously developed.
- h. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
 - (1) The site has been previously altered and an effective vegetated buffer does not exist;
 - (2) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - (3) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - (4) The total height of the wall(s), in the aggregate, are no more than 24 inches, unless the Planning Board approves a greater height if it makes a positive finding that such is required in order to minimize erosion control, maximize slope stability, and is of an appropriate esthetic nature;
 - (5) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
 - (6) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
 - (7) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

- (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
- (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
- (iii) Only native species may be used to establish the buffer area;
- (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
- (v) A footpath not to exceed the standards in 7.18.b may traverse the buffer;

g. i. Notwithstanding the requirements stated above, stairways or similar structures may be allowed, with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils, provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

7.1827 Timber Harvesting

NOTE:- In accordance with 38 M.R.S.A. section 438-B (5), the Town of Falmouth has chosen to have the statewide standards apply to timber harvesting and timber harvesting activities by authorizing the repeal of all provisions within the municipal shoreland zoning ordinance that regulate timber harvesting and timber harvesting activities in shoreland areas as stated in this section. It has notified the Director of the Bureau of Forestry within the Department of Conservation of this repeal. This authorization shall take effect on the date that is consistent with the effective date of the statewide timber harvesting standards. Then, beginning on the effective date of the statewide standards, the Bureau of Forestry will administer and enforce those standards within that municipality and section 7.27 shall be deleted.

- a. Within the shoreland area along the Presumpscot River zoned Resource Protection due to the presence of steep slopes or multiple natural resources, a buffer strip meeting the standards set forth in Section 7.4018.b. shall be maintained between the normal high water line of the waterbody and a line extending fifty (50) feet, horizontal distance, inland from the top of slope.

Within the Resource Protection District along Mill Creek, a buffer strip meeting the standards set forth in Section 7.4018.b. shall be maintained within one hundred and fifty (150) feet, horizontal distance, of the upland edge of the coastal wetland or the normal high-water line if no wetland is present.

- b. Except in areas as described in subsection a. above, timber harvesting shall conform with the following provisions:

- 1) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at four and one-half (4 1/2) feet above ground level on any lot in any ten (10) year period is permitted. In addition:
 - a) Within seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of a designated wetland, there shall be no clearcut openings, and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
 - b) At distances greater than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a designated wetland, harvesting operations shall not create single clearcut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut 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.
- 2) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or 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. Any debris that falls below the normal high-water line of a water body shall be removed.
- 3) Timber harvesting equipment shall not use designated stream channels as travel routes except when:
 - a) Surface waters are frozen; and
 - b) The activity will not result in any ground disturbance.
- 4) 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.
- 5) 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 revegetated.
- 6) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least 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 upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified 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 water body or upland edge of a designated wetland.

7.1928 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.

7.29 Individual Private Campsites

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

- (1) One campsite per lot existing on the effective date of this Ordinance may be permitted within the shoreland zone. New lots within the shoreland zone are required to have a minimum lot area of thirty thousand (30,000) square feet.
- (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, horizontal distance, from the normal high-water line of a great pond classified Great Pond Act or river flowing to a great pond classified Great Pond Act, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- (3) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
- (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 placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

7.30 Essential Services

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures

and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

(3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

7.20 — Conflicting Regulations

~~The shoreland districts shall overlay the districts described in Section 3, and notwithstanding any other provision of the Ordinance, no use shall be allowed in a shoreland district which is not allowed as a permitted use or approved as a conditional use in the applicable underlying zone. Where a Shoreland Zone regulation appears to be in conflict with any other state or local rule, regulation, statute or restriction, the more restrictive requirement shall have precedence.~~

7.21 — Permits Required

~~No person shall engage in any use of land requiring a permit in the district in which it would occur, or expand or change an existing nonconforming use, or renew a discontinued use or convert a seasonal dwelling to a year round dwelling occupied on a year round basis as the principal dwelling place of the occupant, without first obtaining a permit.~~

7.22 — Permit Application

~~Applications for permits shall be submitted in writing. The Code Enforcement Officer or Planning Board may require the submission of whatever information is necessary to determine conformance with the provisions of this Ordinance. Each application to the Code Enforcement Officer for a permit to erect a new building or structure, or to enlarge or to move an existing one, shall be accompanied by a site plan showing the measurements of the lot and of all buildings, yards, and parking spaces, existing and proposed. The intended use of land and buildings shall be indicated clearly. Any other application for a building permit, and any application for a use permit, shall be accompanied by a description of the intended use, or use of the land and buildings, and such further details as the Code Enforcement Officer may require for a clear understanding of the case.~~

7.23 — 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 permit for such facilities has been secured by the applicant, or his authorized agent, in accordance with the requirements of this Ordinance.~~

7.24 — Approval of Permits

~~Permits shall not be denied if the proposed use is found to be in conformance with the provisions of this Ordinance. All permits shall either be approved or denied within sixty (60) days of receipt of a completed application, including all information required.~~

7.25 — Permits Issued by Code Enforcement Officer

~~The Code Officer shall approve or deny those applications on which he is empowered to act, as shown in Section 7.6. Approval shall be granted only if the proposed use is in conformance with the provisions of this Ordinance.~~

~~7.26~~ **Permits Issued by Planning Board**

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

- ~~a. will not result in unsafe and unhealthful conditions;~~
- ~~b. will not result in water pollution, erosion, or sedimentation to surface waters;~~
- ~~c. will adequately provide for the disposal of all wastewater;~~
- ~~d. will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;~~
- ~~e. will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;~~
- ~~f. will protect archaeological and historic resources as designated in the Comprehensive Plan;~~
- ~~g. will avoid problems associated with flood plain development and use; and~~
- ~~h. is in conformance with the provisions of Sections 7.7 through 7.19, Land Use Standards.~~

~~7.27~~ **Conditional Permits**

~~Permits granted by the Planning Board under this Ordinance may be made subject to reasonable conditions to ensure conformity with the intent and provisions of this Ordinance.~~

~~7.28~~ **Expiration of Permit**

~~Following the issuance of a permit, if no substantial start is made in construction or in the use of the property within one year of the date of the permit, the permit shall lapse and become void.~~

~~7.29~~ **Filing of Plans**

~~The Planning Board may require any applicant to file plans drawn and approved by an engineer, architect, surveyor, or other duly qualified consultant to ascertain conformance with the provisions of this Ordinance.~~

~~7.30~~ **Installation of Public Utility Service**

~~No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this, or any previous Ordinance, has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.~~

~~7.31~~ **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, 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 Town Planning Board, Board of Zoning Appeals, or Code Enforcement Officer. The Town shall consider comments received from the Commission prior to rendering a decision on the application.

Note: The Maine Historic Preservation Commission maintains listings and locations of Historic Places in Falmouth.

SECTION 8. BOARD OF ZONING APPEALS

(...)

8.6 Disability Variance

The Board may grant a variance to a property owner for the purpose of making that ~~property~~ dwelling accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the ~~property~~ dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, section 4553 and the term "structures necessary for access to or egress from the ~~property~~ dwelling " is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

(...)

8.8 Appeal procedures

(...)

- f. ~~Following the filing of an appeal, the Board shall promptly notify the Building Inspector and the Planning Board. A copy of each variance request in the shoreland zone, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Zoning Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.~~