

Part 2  
**DEFINITIONS**

**§ 300-201 General definitions. [Amended by Ord. No. 176-07]**

~~A.~~—In the interpretation and enforcement of this chapter, all words shall carry their customary dictionary meanings. For the purpose of this chapter, certain words and terms used herein are defined as follows. Words used in the present tense include the future tense; words used in the singular include the plural; and words used in the plural include the singular.

**BUILDING** - Includes the word "structure."

**CITY** - The City of Augusta.

**LOT** - Includes the words "plot" and "parcel."

**MUNICIPAL OFFICERS** - The City Council.

**PERSON** - Includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

**SHALL** - Is always mandatory; the word "may" is permissive.

**USED or OCCUPIED** - As applied to any land or building, shall be construed to mean, also, "intended, arranged, or designed to be used or occupied."

~~B.~~—The symbol "''" shall be construed to mean "linear feet."

**§ 300-202 Additional definitions. [Amended 1-21-1992 by Ord. No. 303; 2-17-1993 by Ord. No. 26; 6-20-1994 by Ord. No. 546; 4-23-2001 by Ord. No. 37; 5-6-2002 by Ord. No. 210; 10-7-2002 by Ord. No. 281; 8-25-2003 by Ord. No. 100; 10-16-2006 by Ord. No. 170; 2-20-2007 by Ord. No. 027; 2-20-2007 by Ord. No. 028; 6-4-2007 by Ord. No. 109; 2-5-2009 by Ord. No. 016; 6-3-2010 by Ord. No. 084A; 2-3-1011 by Ord. No. 11-019; 6-16-2011 by Ord. No. 11-71; 12-1-2011 by Ord. No. 166]**

As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY STRUCTURE OR USE** - A use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. Accessory uses and structures must comply with all conditions and standards for the location or use and which have been permitted by the Planning Board for the location or use. A deck or similar extension of the principal structure, or a garage attached to the principal structure by a roof or a common wall, is considered part of the principal structure. Accessory residential structures and uses include, but are not limited to, private garages with less than four vehicles; swimming pools; greenhouses operated by and for use by the family living in the residence; and satellite dishes. Accessory structures or uses also include amateur radio and citizen band radio towers exceeding 35 feet (excluding antennas) in height above the ground. Such towers less than 35 feet in height above the ground are permitted by right (no permit required).

**ADJACENT GRADE** - The natural elevation of the ground surface before construction next to the proposed walls of the structure.

**ADULT BUSINESS ESTABLISHMENT** - Any business otherwise permitted as a retail business or service establishment, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, of which a substantial or significant portion consists of selling, renting, leasing, exhibiting, displaying, or otherwise dealing in materials, devices, or activities of any kind which appeal to prurient interests and which depict or describe specified sexual activities, or videotapes rated X, NC-17, or classified as suitable for adults or persons 18 years of age or older, or are displayed in a portion of a facility open only to persons older than 18 years of age.

**AGGRIEVED PARTY** - ~~A person~~ An owner of land whose ~~land or~~ property is directly or indirectly affected by the granting or denial of a permit or variance under this chapter; ~~or a~~ person whose land ~~or property~~ abuts land ~~or property~~ for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance. For the purposes of a Planning Board decision, an aggrieved party must have also participated in person, through an authorized representative, or in writing at a public hearing related to the decision being appealed.  
[Amended 6-4-2007 by Ord. No. 109]

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

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

**AREA OF LAND IN NONCONFORMING USE** - Includes building footprint, accessory structures, storage and parking areas and all areas on the property associated with the operation of the nonconforming use. "Area in nonconforming use" also includes all land area within the outer limits of the above-noted structures, storage and parking areas, including yards and setback areas. Undisturbed or natural areas on the same lot as the nonconforming use and outside the area described above shall not be used in calculating the area in nonconforming use.

**AREA OF SHALLOW FLOODING** - The designated AO and AH Zone on the City's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average depth of one feet to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD** - The land in the floodplain having a one-percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study, cited in Part 5, Performance Standards, of this chapter.

**AUTOMOBILE BUSINESS** - Establishments primarily engaged in the sales, repair, and/or service of automobiles, mobile homes, farm machinery, motorcycles, ATVs, and similar activities, including but not limited to auto repair garages, filling stations, car washes, machinery repair, auto sales, farm machinery sales and services, house trailer sales, manufactured housing and similar activities. Retail automobile parts and supplies are not considered automobile

businesses. Where specifically listed, auto sales may include auto repair; auto repair shall not include auto sales.

**AUTO REPAIR/SERVICE** - Establishments primarily engaged in providing repair and replacement services for automotive vehicles, such as passenger cars, trucks, and vans, and all trailers, including the sale, installation, and servicing of equipment and parts. Establishments in this industry group employ mechanics with specialized technical skills to diagnose and repair the mechanical and electrical systems for automotive vehicles, repair automotive interiors, and paint or repair automotive exteriors.

**BARBER/BEAUTY SHOP** - Establishments primarily engaged in one or more of the following:

- A. Cutting, trimming, shampooing, weaving, coloring, waving or styling hair;
- B. Providing facials and/or manicures/pedicures; and
- C. Applying makeup.

**BASAL AREA** – The area of cross-section of a tree trunk at 4 ½ feet above the ground level and inclusive of bark.

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

**BASEMENT** - ~~Any area of a building having its floor subgrade (below ground level) on all sides.~~ Any portion of a structure with floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

**BASE SITE AREA** - That portion of a parcel as calculated pursuant to Part 3, Article IV, Site Capacity Analysis, of this chapter; the extent to which a site is developable.

**BED-AND-BREAKFAST/TOURIST HOME** - A place that advertises itself as a bed-and-breakfast where the public for a fee may obtain overnight accommodations that include a sleeping room or rooms and at least one meal per day.

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

**BUFFER YARD** - A unit of land, together with a specified type and amount of planting thereon, and any structures such as but not limited to fences, retaining walls and berms, which may be required between land uses to eliminate or minimize conflicts.

**BUILDING** - See "structure."

**BUILDING HEIGHT (MAXIMUM)** - The vertical height from the sidewalk or finished grade at the center of the front of a building to the highest point of the roof surface, if a flat roof; to the decline for mansard roofs; and to the mean height between eaves and ridges for gable, hip, and gambrel roofs. For purposes of applying regulations in shoreland areas, the height of a structure shall be the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys,

steeple, antennas, and similar appurtenances which have no floor area.

**BUREAU OF FORESTRY – State of Maine Department of Agriculture, Conservation and Forestry, Bureau of Forestry.**

**BUSINESS PARK** - A planned development designed and arranged for business and professional uses, uses that are accessory or that provide services to business and professional uses.

**BUSINESS/PROFESSIONAL ASSOCIATIONS** - Establishments primarily engaged in promoting the business and/or professional interests of their members and the profession as a whole. These establishments may conduct research; develop statistics; sponsor quality and certification standards; lobby public officials; or publish newsletters, books, or periodicals for distribution to their members.

**BUSINESS/PROFESSIONAL SERVICES/OFFICES** - A room or group of rooms used for conducting the affairs of a business or professional entity, not entailing the sale of goods except that which is clearly incidental. Examples of business/professional offices and services include but are not limited to doctors; dentists; consultants; engineers; realtors; insurance agents; and lawyers' offices; artist's studio.

**CALIPER** - A measurement of the size of a tree equal to the diameter of its trunk, measured six inches above natural grade for trees having calipers less than or equal to four inches diameter, and measured 12 inches above grade for tree calipers greater than four inches diameter.

**CAMPGROUND** - Any area or tract of land to accommodate accommodating for a fee-(2) two or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters. Considered a recreational use of land for purposes of this chapter.

**CANOPY – The more or less contiguous cover formed by tree crowns in a wooded area.**

**CEMETERIES** - Land used or dedicated to the burial of the dead, including crematoriums, mausoleums, necessary sales, and maintenance facilities. Mortuaries and funeral establishments shall be included when operated within the boundary of such cemetery.

**CEO** - See "Code Enforcement Officer."

**CERTIFICATE OF OCCUPANCY AND COMPLIANCE** - A document signed by the Code Enforcement Officer stating that a structure or development is in compliance with all applicable provisions of this chapter.

**CHANNEL** - See "watercourse."

**CHILD-CARE FACILITY** - See "day-care center."

**CHURCH** - A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

**CITY ENGINEER** - The City Engineer may be a regular employee of the City or a consultant to the City. The individual designated as City Engineer shall be a registered professional engineer, licensed by the State of Maine.

**CIVIC, SOCIAL, AND FRATERNAL ORGANIZATIONS** - Establishments primarily engaged in promoting the civic and social interests of their members.

**CLUSTERED (OR PLANNED UNIT) RESIDENTIAL DEVELOPMENT** - Land under unified management, planned and developed as a whole according to comprehensive and detailed plans, including streets, lots or building sites, site plans and design principles for all buildings intended to be located, constructed, used and related to each other, and for other uses and improvements on the land. Development may be a single operation or a programmed series of operations, including all lands and buildings, with provision for operation and maintenance of such areas, facilities and improvements necessary for common use by occupants of the development.

**COASTAL WETLAND** - All tidal and subtidal lands; ~~all lands below any identifiable debris line left by tidal action~~; all lands with vegetation present that is tolerant of saltwater and occurs primarily in a saltwater or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the ~~highest maximum spring~~ tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**CODE ENFORCEMENT OFFICER (CEO)** - Any person responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.

**COMMERCIAL USE** - The use of lands, buildings, or structures, other than a home occupation, defined herein, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units. Uses considered commercial by this chapter are found in the Standard Industrial Classification Manual under the following category headings: Retail Trade; Finance, Insurance and Real Estate Services; Wholesale Trade. All uses listed in the Table of Land Uses in the Base Zoning Districts,<sup>[1]</sup> except those listed under the "Residential" subsection, shall be considered commercial uses by this chapter.

**COMMUNICATIONS FACILITY** - See "utility."

**COMPACT AREA** - For purposes of this chapter, the "compact area" of the City of Augusta shall mean that area contained within the "Revised Urban Boundaries" shown on "Map of Compact Area, Augusta, Kennebec County, Maine," prepared by the State of Maine Department of Transportation, Bureau of Planning, in cooperation with the United States Department of Transportation, Federal Highway Commission (1975). Said map is hereby incorporated into this chapter and shall be maintained on file with the Official Zoning Map. For purposes of this chapter, except with respect to the provisions of OBDS, the compact area of the City of Augusta shall also include the Urban Growth Area designated in the 1988 Growth Management Plan.

**CONDITIONAL USE** - A permitted use which may not be appropriate without restriction in a particular district, but which, in the opinion of the Planning Board, if controlled as to number, location, relation to the neighborhood, site design, operational aspects, traffic generation, impact on public facilities and implementation of performance standards, would promote the public safety, health, convenience or welfare. A conditional use shall be allowed in a district only if the regulations for that district specifically permit it, subject to the approval of the Planning Board, and only when the Board finds that such use meets all of the requirements applicable to it as

specified in this chapter.

**CONFERENCE CENTER** - A facility used for conferences and seminars, with accommodations for food preparation and eating, entertainment, resource facilities, and meeting rooms. The total floor area of a conference center shall not exceed 20,000 square feet.

[Added 11-20-2014 by Ord. No. 14-191]

**CONSTRUCTION SERVICES** - Any of the activities commonly referred to as "construction" and shall include but not be limited to plumbing, heating, electrical, roofing, carpentry, interior remodeling, and equipment rental.

**CONVENTION FACILITY** - A building, or portion thereof, designed to accommodate 300 or more people in assembly. [Added 11-20-2014 by Ord. No. 14-191]

**CORRECTIONAL INSTITUTION** - A publicly or privately operated facility generally designed for the confinement, correction, and rehabilitation of adult and/or juvenile offenders sentenced by a court.

**COURT** - A publicly operated facility used for the purposes of trying and sentencing individuals suspected or guilty of committing a criminal offense or for hearing and deciding on civil disputes.

**CUSTOMARILY** - More often than an average of one calendar week during any calendar month of operation.

**DAY-CARE CENTER** - A facility licensed by the state primarily engaged in providing nonresidential social assistance, including care, supervision, and protection, during daytime hours to more than 12 children or adults who are not all related to each other by blood or marriage and who are not legal wards or foster children of the care providers, and which is not being used as a residence by the care providers. Services may include child day care, nonmedical home care or homemaker services, social activities, group support, and companionship.

**DAY-CARE HOME** - A residence in which care is given during daytime hours to no more than 12 persons of various ages and which may or may not be licensed according to the state's criteria. This use differs from a day-care center in that it is conducted by persons who are living in the home at which the day care is being provided. Day-care homes must also meet the standards for home occupations.

**DBH/DIAMETER AT BREAST HEIGHT** - A measurement of the size of a tree equal to the diameter of its trunk measured 4.5 feet above natural grade.

**DENSELY DEVELOPED AREA** - Any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per two acres.

**DEVELOPMENT** - Any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

A. **MAJOR DEVELOPMENT** - Any multifamily or nonresidential development project that:

- (1) Creates more than 25,000 square feet of new floor space in the CD or IA Zones; or
- (2) Creates more than 10,000 square feet of new floor area in zones not listed in Subsection **A(1)** above; or
- (3) Disturbs more than 43,560 square feet of land; or
- (4) Creates more than 43,560 square feet of new impervious surface; or
- (5) New construction that generates more than 100 trips in the peak hour for the proposed use; or
- (6) Proposes a new wireless communications facility that will require construction of a new tower; or
- (7) Proposes the construction, erection, or placement of a fixed, portable or temporary bituminous mix plant or ready mix concrete plant.

B. **MINOR DEVELOPMENT** - Any multifamily or nonresidential development project that:

- (1) Creates between 5,000 and 25,000 square feet of new floor area in the CD and IA Zones; or
- (2) Creates between 1,000 and 10,000 square feet of new floor area in zones not listed in Subsection **B(1)** above; or
- (3) That disturbs between 10,000 and 43,560 square feet of land; or
- (4) Creates between 10,000 and 43,560 square feet of new impervious surface; or
- (5) Creates four or more residential units in a preexisting single-family, duplex or multifamily structure; or
- (6) New construction that generates between 35 and 99 trips in all zoning districts, except CD and IA, in the peak hour for the proposed use; or
- (7) Any change of use where the proposed use requires 25% more on-site parking, as calculated using the parking requirements in this chapter, than the applicant proposes to make available on site; or
- (8) Proposes co-location of a wireless communications facility on an existing tower that will require construction of a new equipment shed; or
- (9) All uses proposing to construct a drive-through service or vehicle refueling pumps that do not otherwise qualify for major or minor development review.

C. **OTHER DEVELOPMENT** - Requiring a permit from the CEO if listed as a permitted use

or requiring a permit from the Planning Board if listed as a conditional use.

**DIMENSIONAL REQUIREMENTS** - Numerical standards relating to spatial relationships, including but not limited to setback, lot area, road frontage, shore frontage, height, floor area and impervious surface factors and ratios and open space ratios.

**DIRECT LIGHT** - Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens of a luminaire.

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

**DISCHARGE** - The outflow of water, silt or other mobile substances passing along a conduit, watercourse, or a channel or released from detention storage.

**DISCONTINUANCE OF NONCONFORMING USE** - Complete cessation or abandonment of a use evidenced by removal of all advertising signs, or removal of all contents of the structure necessary to conduct the business, or allowing the building to become dilapidated or by changing to a conforming use.

**DRAINAGE** - The removal of surface water or groundwater from land by drains, grading, or other means. Drainage includes the control of runoff to minimize erosion and sedimentation during or after development and includes the means necessary for water supply preservation or for prevention or alleviation of flooding.

**DRAINAGEWAY** - See "watercourse."

**DRIVEWAY** - A paved or unpaved area used for ingress and egress of vehicles from a street or road right-of-way to buildings or other structures or facilities on a lot. When said distance of driveway between the street right-of-way and structures/facilities is longer than 100 feet in length, it shall meet the minimum requirements identified in the Augusta Technical Standards Handbook for an emergency access lane. A shared driveway for up to two adjacent lots shall be allowed if there is a recorded driveway easement that runs with the land and if each lot has the minimum required lot frontage on a street/road right-of-way. The easement must describe the maintenance and repair responsibilities of each party. A shared driveway shall meet the minimum requirements of § 5.4 of Augusta's Technical Standards Handbook. In the shoreland zone, a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

**DWELLING, MULTIFAMILY** - A residential structure containing three or more dwelling units.

**DWELLING, ONE-FAMILY** - A residential structure containing one dwelling unit.

**DWELLING, TWO-FAMILY** - A residential structure containing two dwelling units.

**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.

**EARTH, EARTH REMOVAL** - Includes topsoil (loam), sand, gravel, and clay taken from the land. "Earth removal" shall mean the extraction of topsoil, sand, gravel, and clay from the earth. See "development," "earth filling" and "mineral extraction."

**EDUCATIONAL SERVICES** - Use of land or a building or buildings for the establishment and maintenance of a public or private college, secondary or elementary school or other educational institution that is designed, constructed, or used for education or instruction of persons in any branch of knowledge.

**ELEVATED BUILDING** - A nonbasement building or structure:

- A. Built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, posts, piers, or stilts; and
- B. Adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls less than three feet in height with openings sufficient to facilitate the unimpeded movement of floodwaters.

**ELEVATION CERTIFICATE** - An official form (FEMA Form 81-31, 05/90, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program and is required as a condition for purchasing flood insurance.

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

**EROSION** - The detachment and movement of soil, organic matter or rock fragments by water, wind, ice or gravity.

**ESSENTIAL SERVICES** - ~~The construction, alteration or maintenance of g~~Gas, electrical or communications facilities; steam, fuel, telephone, electric power or water transmission or distribution lines, towers and related equipment; telephone cables of lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. For the purposes of this chapter, such systems may do not include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not nor do such systems include service drops or buildings which are necessary for the furnishing of such services.

**EXPANSION OF A STRUCTURE** - An increase in the footprint floor area or volume of a structure, including all extensions, such as but not limited to attached decks, garages, patios, porches and greenhouses. Expansion of a structure shall not include construction of stairways, fire escapes or other changes as mandated by federal, state or local building or safety codes.

**EXPANSION OF USE** - The addition of ~~weeks or one or two~~ months to a use's operating season; additional hours of operation; or the use ~~or addition~~ of more footprint floor area of a structure or ground area devoted to a particular use. See § 300-309 providing for modifications to nonconforming uses.

**FAMILY** - One or more persons occupying a premises and living as a single housekeeping unit.

**FARM STAND** - A structure for the display and sale of farm products primarily grown on the property upon which the stand is located; may also involve the accessory sales of other unprocessed foodstuffs, home-processed food products, and homemade handicrafts.

**FILLING STATION** - Any building, land area, or other premises, or portion thereof, used for the retail dispensing or sales of vehicular fuels, and including as an accessory use the retail sale and installation of lubricants, tires, batteries, and similar vehicle accessories. A filling station is not a repair garage or a body shop. See "automobile business."

**FINANCE, INSURANCE, AND REAL ESTATE SERVICES** - Establishments such as banks and financial institutions, credit agencies, investment companies, brokers of and dealers in securities and commodities, security and commodity exchanges, insurance agents, lessors, lessees, buyers, sellers, agents, and developers of real estate.

**FIXTURE** - The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

**FLAG LOT** - See "lot, flag."

**FLOOD ELEVATION STUDY** - An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**FLOOD INSURANCE RATE MAP (FIRM)** - An official map of a community, on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.

**FLOOD or FLOODING** -

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
- (1) The overflow of inland or tidal waters.
  - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection A(1) of this definition.

**FLOODPLAIN MANAGEMENT** - The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency

preparedness plans, flood-control works, and floodplain management regulations.

**FLOODPLAIN OR FLOOD-PRONE AREA** - Any land area susceptible to being inundated by water from any source. (See definition of "flood or flooding.")

**FLOODPROOFING** - Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY** - See "regulatory floodway."

**FLOOR AREA** - The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

**FLOOR AREA ~~RATIO-FACTOR~~** - A ratio derived by dividing the total floor area by the net buildable site area.

**FLOORING SHOWROOM** - A retail business establishment where flooring materials are exhibited for sale or where samples are displayed.

**FOOTPRINT** - The entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

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

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

**FOUNDATION** - The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including ~~but not limited to~~ basements, slabs, sills, posts or frost walls, or other base consisting of concrete, block, brick or similar material.

**FREEBOARD** - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect or urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**FREQUENTLY FLOODED** - See "hydric soils." Flooding likely to occur often under usual weather conditions; more than a fifty-percent chance of flooding in any year or more than 50 times in 100 years.

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

A. Of 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 a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**FUEL WOOD PRODUCTION** - The mechanized processing of wood into any length less than tree length, not accessory to a timber harvest, when not burned or consumed on site.

[Added 1-17-2013 by Ord. No. 13-008]

**FUNCTIONALLY/WATER-DEPENDENT USES** - With respect to § 300-508, Flood damage prevention standards, "functionally dependent use" means a principal use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. With respect to shoreland zoning regulations, § 300-316.1, "functionally water-dependent uses" are 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-related storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, 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 coastal and inland ~~marine or tidal~~ waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

**FUNERAL HOME** - A building used for the preparation of the deceased for burial and display and rituals connected therewith before burial or cremation. A funeral home, as defined for purposes of this chapter, includes a funeral chapel.

**GARAGE, PRIVATE** - An accessory residential building, or part of a principal residential building, including a carport, used primarily for the storage of motor vehicles.

**GARDEN CENTER** - An enterprise where plants either imported or grown on the site are sold, at retail and wholesale, as well as accessory items directly related to the planting, harvesting, maintenance and care of plant life, including plants, shrubs, trees, packaged fertilizers, soils, chemicals, garden tools, gifts, and other nursery goods and similar accessory and ancillary products in small quantities. This activity includes greenhouses. This activity does not include the sale, either retail or wholesale, of power equipment, such as gas or electric lawnmowers and farm implements, or of gravel.

**GENERAL SURFACE WATER RESOURCE AREAS** - Areas along all brooks, streams, wetlands and natural drainageways not protected by M.R.S.A. Title 38 but considered to have value in their natural state for the maintenance of biotic systems and in their capacity to carry

stormwater.

**GFA** - See "gross floor area."

**GLARE** - Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.

**GOVERNMENT OFFICES** - A room or group of rooms used for conducting the affairs of a government entity, not entailing the sale of goods except that which is clearly incidental.

**GOVERNMENT SERVICES** - For the purposes of this chapter, "government services" shall include the functions performed by the various government agencies in the City. Government services shall include but not be limited to the following: capitol, administration, courts, jails, public safety (police, fire and emergency/rescue), public schools, postal services, public works and municipal utilities.

**GOVERNMENT USES** - Any building, site, or use owned, operated, or facilitated by any governmental entity or agency.

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

Note: All ponds in Augusta are Great Ponds.

**GREAT POND CLASSIFIED GPA** - Any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A § 465-A. This classification includes some, but not all, impoundments of rivers that are defined as "great ponds." Note: All ponds in Augusta are Great Ponds.

**GREENHOUSE** - A building used for the cultivation of plants whose roof and sides are made largely of glass or other transparent or translucent material.

**GROSS FLOOR AREA** - The sum of the gross area of the several floors of a building or buildings measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings.

A. In particular, floor area generally includes:

- (1) Basement space, except as specifically excluded.
- (2) Elevator shafts or stairwells at each floor.
- (3) Floor spaces in penthouses.
- (4) Attic space (whether or not a floor has been laid) providing structural headroom of seven feet, six inches, or more.
- (5) Floor space in interior balconies or mezzanines.
- (6) Any other floor space used for dwelling purposes, no matter where located within a building.

- (7) Floor space in accessory buildings, except for floor space used for accessory off-street parking.
- (8) Any other floor space not specifically excluded.

B. However, the gross floor area of a building shall not include:

- (1) Cellar space, except that cellar space used for retailing shall be included for the purpose of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths.
- (2) Elevator or stair bulkheads, accessory water tanks, or cooling towers.
- (3) Uncovered steps.
- (4) Attic space (whether or not a floor actually has been laid) providing structural headroom of seven feet, six inches.
- (5) Floor space used for mechanical equipment.

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

**GROUP HOMES** - A residential care facility licensed by the State of Maine, wherein persons not legally related to the operator are provided personal care, supervision and social or rehabilitative services. The facility serves as a substitute for the residents' own homes, furnishing facilities and comforts normally found in a home but providing, in addition, such service, equipment, and safety features as are required for safe and adequate care of the residents. "Group home" includes community living uses, as defined in 30 M.R.S.A. § 4962-A,[2] but does not include foster family homes or nursing homes.

**HABITAT, SIGNIFICANT WILDLIFE** - Areas designated by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. §§ 480-A through 480-S, and described in § **300-316.1C(1)** of this chapter.

**HAZARD TREE** - A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

**HEAVY EQUIPMENT REPAIR** - Establishments primarily engaged in the repair and maintenance of commercial and industrial machinery and equipment. May include the rental, but not sales, of heavy equipment.

**HEIGHT OF A STRUCTURE** - See "building height (maximum)."

**HISTORICAL SOCIETY** - A nonprofit membership organization dedicated to the preservation of historical documents, materials, and artifacts and promoting an increased awareness of these items. Such organizations often make historical documents, materials, and artifacts available to the wider public by providing research opportunities, museums and display areas, interpretive programs, lecture series at their site, and other accessory uses, sometimes for a fee.

**HISTORIC STRUCTURE** - Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) By an approved state program as determined by the Secretary of the Interior; or
  - (2) Directly by the Secretary of the Interior in states without approved programs.

**HOME OCCUPATION** - An occupation or profession which is customarily conducted on or in a residential structure or property and which:~~carried on in a residential dwelling unit or structure accessory to the dwelling unit which:~~

- A. Is clearly incidental to and compatible with the residential use of the property and surrounding residential uses;~~use of the dwelling for residential purposes;~~
- B. Occupies no more than 30% of the floor area of all structures on the property;
- C. Does not change the outside appearance of the residential dwelling unit or premises;
- D. Is conducted entirely within the dwelling unit or accessory structure; and
- E. Employs no more than two persons other than family members residing in the home.

**HOSPITALS** - Institutions, licensed by the State Department of Health, providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions, and including as an integral part of the institution related facilities such as laboratories, outpatient facilities, or training facilities.

**HOTEL (MOTEL, MOTOR LODGE, TOURIST COURT)** - A building or group of buildings in which more than 16 rooms are used to offer transient lodging accommodations to

the general public and which may include additional facilities and services, such as restaurants, meeting rooms, entertainment, personal services, and recreational facilities.

### **HYDRIC SOIL CRITERION**

- A. All histosols except folists; or
- B. Soils in aquic suborders, aquic subgroups, albolls suborder, salorthids great group, or pell great groups of vertisols that are:
  - (1) Somewhat poorly drained and have water table less than 0.5 foot from the surface for a significant period (usually a week or more) during the growing season; or
  - (2) Poorly drained or very poorly drained and have either:
    - (a) Water table at less than one foot from the surface for a significant period (usually a week or more) during the growing season if permeability is equal to or greater than six inches/hour in all layers within 20 inches; or
    - (b) Water table at less than 1.5 feet from the surface for significant period (usually a week or more) during the growing season if permeability is less than six inches/hour in any layer within 20 inches; or
- C. Soils that are ponded for long duration or very long duration during the growing season; or
- D. Soils that are frequently flooded for long duration or very long duration during the growing season.

Source: The National Technical Committee for Hydric Soils (USDA Soil Conservation Service,<sup>[3]</sup> 1987).

**HYDRIC SOILS** - Soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part (USDA Soil Conservation Service, 1987). In general, hydric soils are flooded, ponded, or saturated for usually one week or more during the period when soil temperatures are above biologic zero 41° F., as defined by "Soil Taxonomy" (U.S.D.A. Soil Survey Staff, 1975). These soils usually support hydrophytic vegetation.

**IESNA** - Illuminating Engineering Society of North America, an internationally recognized authority on lighting design. Publishers of RP-33-99.

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

**IMPERVIOUS SURFACE RATIO** - A measure of the intensity of land use which is determined by dividing the total area of all impervious surfaces on a site by lot area.

### **IMPROVEMENT TO A STRUCTURE**

Internal modification, including alterations and renovations, and window replacement, as

well as minor exterior modifications necessary for health and safety such as but not limited to fire escapes and means of egress. Reroofing and placement of siding is not considered improvement to a structure.

**INCREASE IN NONCONFORMITY OF A STRUCTURE** - Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

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

**INDUSTRIAL USES** - Those establishments which create new (or altered) products from raw materials or other product through various processes for ultimate distribution and sale. The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals. See "manufacturing (heavy)" and "manufacturing (light)."

**INSTITUTIONAL USES** - For the purposes of this chapter, or unless otherwise specified, institutional uses include public and private schools, nursing homes, religious activities and associated uses and funeral homes.

**INTERMITTENT STREAM** - See "stream."

**JUNKYARD** - See "waste facility, Class 2." A junkyard shall be considered and reviewed as a Class II waste facility and shall include the following:

- A. **AUTOMOBILE OR MOTOR VEHICLE WRECKING YARD, JUNKYARD OR GRAVEYARD** - An open outside area occupied by three or more unregistered, unserviceable, discarded or junked automotive vehicles or bodies, engines or their parts, sufficient in bulk to equal three vehicles, and including the commercial salvaging of any other goods, articles or merchandise. "Junkyard" does not include tire storage or operations associated with tire storage such as shredding and processing. (See "waste facility.")
- B. **JUNKYARD OR AUTOMOBILE GRAVEYARD** - An open outside area used for the storage, keeping, sorting, processing, baling or abandonment of junk, including but not limited to scrap metals or other materials such as paper, rags, bottles, machinery or parts thereof. "Junkyard" differs from "recycling center" in that recycling operations are wholly contained indoors.

**LAND LEASE COMMUNITY** - See "manufactured housing park."

**LAUNDRY SERVICES** - Establishments primarily engaged in one or more of the following:

- A. Providing dry-cleaning services;
- B. Providing laundering services, including self-service coin-operated machines for use on the premises;
- C. Providing dropoff and pickup sites for laundries and/or dry cleaners; and
- D. Providing specialty cleaning services for specific types of garments and other textile items (except carpets and upholstery), such as fur, leather, or suede garments; wedding gowns; hats; draperies; and pillows.

**LICENSED PLUMBING INSPECTOR (LPI)** - An individual licensed by the State of Maine Department of Human Services to review and inspect requests for internal and external plumbing permits.

**LIGHT MANUFACTURING** - See "manufacturing (light)."

**LIGHT TRESPASS** - The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

**LOADING SPACE, OFF-STREET** - Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included in off-street parking space in the computation of required off-street parking space.

**LOCALLY ESTABLISHED DATUM** - For purposes of this chapter, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where mean sea level data is too far from a specific site to be practically used.

**LOT** - For purposes of this chapter, a lot is a registered or recorded parcel of land of at least sufficient size to meet minimum zoning requirements for use and dimensions and to provide such yards and other open spaces as are herein required. For the purposes of this chapter, an easement shall not be considered a lot.

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

**LOT, FLAG** - A back lot or parcel which meets special area requirements of the zone in which it exists, has no less than 40 feet of frontage on a public road which provides access designed in accordance with § 300-505, Driveway and access standards. See § 300-507, Flag lot standards.

#### **LOT LINES**

- A. **FRONT** - The line separating any lot from a street or streets.

- B. **REAR** - A lot line which is opposite and most distant from the front lot line; in the case of a triangular or irregular lot, a line 10 feet long within the lot, parallel to and farthest from the front lot line.
- C. **SIDE** - Any lot line not a front or rear lot line.

**LOT MEASUREMENTS**

- A. **LOT FRONTAGE** - The fee simple or leasehold boundary line of a lot which extends along a recorded or recordable street/road right-of-way which meets the minimum width requirements for the intended use on said lot. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under "yards" in this section. Double frontage lots may consider all front footage in determining minimum frontage requirements.
- B. **LOT, DOUBLE FRONTAGE** - A lot abutting two parallel streets, or abutting two intersecting streets at points removed from their juncture.
- C. **LOT DEPTH** - The distance between the midpoint of straight lines connecting the foremost points of the side lot line in front and the rearmost points of the side lot lines in the rear.
- D. **LOT WIDTH** - The distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard. For purposes of applying shoreland regulations, minimum lot width shall be considered to be the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

**LOT OF RECORD** - Land designated as a separate and distinct parcel in a legally recorded deed and plan filed in the Kennebec County Registry of Deeds.

**LOWEST FLOOR** - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements found in Part 5, Performance Standards, of this chapter.

**LPI** - Licensed plumbing inspector.

**LUMEN** - A unit of luminous flux. One footcandle is one lumen per square foot. For the purposes of this chapter, the lumen output values shall be the initial lumen output ratings of a lamp.

**LUMINAIRE** - This is a complete lighting system, and includes a lamp or lamps and a fixture.

~~**MAINE EROSION AND SEDIMENTATION CONTROL HANDBOOK FOR CONSTRUCTION**—The handbook developed and published by the Department of Environmental Protection, first draft dated April 15, 1990, and titled "Urban BMPs." The~~

~~handbook is intended to replace the Environmental Quality Handbook prepared by the Maine Soil and Water Conservation Commission.~~

**MANUFACTURED HOME** - See "manufactured housing."

**MANUFACTURED HOUSING** - 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. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this chapter, two types of manufactured housing are included. Those two types are:

- A. **TYPE I** - Those units constructed after June 15, 1976, commonly called "newer mobile homes," which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, which, in the traveling mode, are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air-conditioning and electrical systems contained in the unit;
  - (1) This term also includes any structure which meets all the requirements of this paragraph, except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standard established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, § 5401 et seq.; and
- B. **TYPE II** - Those units commonly called "modular homes," which the manufacturer certifies are constructed in compliance with Title 10, Chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.
- C. For purposes of flood damage prevention standards, the term "manufactured housing" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**MANUFACTURED HOUSING PARK/LAND LEASE COMMUNITY** - For purposes of flood damage prevention rules and regulations, a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MANUFACTURING (HEAVY)** - Heavy manufacturing shall include industrial uses, including assembly, fabrication, processing, packaging, storage, distribution, or other industrial processing of products, in which manufacturing processes are conducted indoors or out of doors and in which external evidence of the manufacturing process is detectable out of doors, and shall include any establishment or facility using large unscreened outdoor structures that cannot be integrated into the building design, or engaging in large-scale outdoor storage. Heavy

manufacturing, for the purposes of this chapter, includes but is not limited to wood fiber products manufacturing; chemical manufacturing; textile mills; steel fabrication; manufactured housing manufacturing; roof truss manufacturing; sawmills, turneries and fuel wood production; dairies; grain mills; seafood products production; and beverage manufacturing.

**MANUFACTURING (LIGHT)** - Light manufacturing shall include industrial uses, including manufacturing, assembly, fabrication, processing, packaging, storage, distribution, or other processing of products, in which manufacturing processes are wholly contained within a building and which exhibit no external evidence of a manufacturing process such as but not limited to noise, odor, vibration, dust, smoke, cinders, or fumes.

**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, ~~bait boat~~ and tackle shops and marine fuel service facilities.

**MARKET VALUE** - The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**MEAN SEA LEVEL** - For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on Augusta's Flood Insurance Rate Map are referenced.

**MEDICAL CLINIC** - A facility operated by two or more licensed practitioners of the healing arts providing medical, psychiatric, or surgical service for sick or injured persons or for the examination, diagnosis, health maintenance, and treatment of persons solely on an outpatient basis.

**MEDICAL GUESTHOUSE** - A facility exclusively used by patients and their families visiting Augusta to access services at the Alford Center for Health and the Alford Center for Cancer Care. [Added 2-6-2014 by Ord. No. 14-017]

**MEDICAL MARIJUANA GROW-ONLY FACILITY** - A facility that engages only in the growing and processing of medical marijuana in accordance with state law, but does not dispense marijuana. Processing of medical marijuana may include, but is not limited to, the preparation of tinctures, ointments, and food products containing medical marijuana.

**MH and MHP** - As used in this chapter, "MH" is equivalent to "mobile home" or "manufactured housing"; "MHP" is equivalent to "mobile home park" and "manufactured housing park."

**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.

**MINERAL EXTRACTION ACTIVITY** - Any operation where soil, topsoil, loam, sand, gravel, clay, rock, peat, or other mined material is removed from its natural location or where it is handled. All of the land area disturbed or otherwise developed for the extraction, removal, handling, processing, or storage of sand, gravel, clay, minerals, stone, rock, or topsoil, including any access roads and cleared areas adjacent to a pit or excavated area, structures, office building,

parking lots and stockpiles, is considered to be a part of the mineral extraction site or area. Accessory uses may be conducted at a mineral extraction activity site.

**MINIMUM LOT WIDTH** - See "lot measurements": "lot width."

**MINOR FLOODPLAIN DEVELOPMENT** - All development that is not new floodplain construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes but is not limited to accessory structures as provided for in this chapter, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures, and nonstructural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**MOBILE HOME** - See "manufactured housing."

**MOBILE HOME PARK** - A parcel of land under unified ownership approved by the municipality for the placement of three or more units of manufactured housing.

**MODULAR HOME** - See "manufactured housing."

**MULTIPLE-FAMILY DWELLING/MULTI-UNIT RESIDENTIAL** - A residential structure containing three or more residential dwelling units.

**MUNICIPAL OR PUBLIC UTILITIES AND COMMUNICATIONS FACILITIES** - The use of land for public utility purposes by an entity providing pipeline, gas, electrical, telephone, telegraph, water, or sewage service. "Public utility" also includes the use of land for utility purposes, whether or not owned, controlled, or operated by a public entity, whose services are performed for or commodities delivered to the public or any portion thereof. Facilities that provide for the transmission, transfer, and distribution of telephone service and related activities that are not a minor or major utility facility. For the purposes of this chapter, a municipal or public utility or communications facility includes, but is not limited to, the following: a private telephone company or paging service, any utility regulated by the Maine Public Utilities Commission, and any other commercial communications tower.

**A. MAJOR MUNICIPAL OR PUBLIC UTILITIES/COMMUNICATIONS**

**FACILITIES** - Any public service improvement or structure developed by or for a public agency that is not defined as a "minor public facility," including but not limited to water, sanitary treatment plants, electric transmission lines and electric generation plants.

**B. MINOR MUNICIPAL OR PUBLIC UTILITIES/COMMUNICATIONS FACILITIES**

- Any public service improvement or structure developed by or for a public agency that is not defined as a "major public utility or communications facility," including but not limited to pumping and pressure control stations, standpipes, reservoirs, wells and other water storage structures, telephone equipment huts (over 200 square feet) and electricity regulating substations.

**C. WIRELESS MUNICIPAL OR PUBLIC UTILITIES/COMMUNICATIONS**

**FACILITIES** - Any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phones services, specialized mobile radio communications (SMR),

common-carrier wireless exchange phone services, and personal communications services (PCS) or pager services.

**MUSEUM** - A nonprofit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment. [Added 5-7-2015 by Ord. No. 15-070]

**NATIVE – Indigenous to the local forests.**

**NEIGHBORHOOD GROCERY/VARIETY STORE** - A small convenience retail establishment which does not include gasoline refueling facilities. See "convenience retail."

**NET BUILDABLE SITE AREA** - The calculated area of the buildable portion of a lot after deducting minimum required open space for residential projects, or required floor area factor for nonresidential projects, from the base site area.

**NEW CONSTRUCTION** - Structures for which the start of construction commenced on or after the effective date of the floodplain management regulations adopted by the City of Augusta in July of 1987.

**NEW FLOODPLAIN CONSTRUCTION** - Structures for which the start of floodplain construction commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**NEW STRUCTURE OR STRUCTURES** - Any structure for which construction begins on or after September 23, 1988, and including any subsequent improvements to such structures. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of applying subdivision regulations. See "subdivision."

**NGVD** - The National Geodetic Vertical Datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). See "mean sea level."

**NONCONFORMING BUILDING OR STRUCTURE** - A structure which does not meet any one or more of the following dimensional requirements: setback, floor area ratio, height, ~~or~~ lot coverage or footprint, but which is allowed to remain solely because it was in lawful existence at the time this chapter or subsequent amendments took effect.

**NONCONFORMING CONDITION – Non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.**

**NONCONFORMING LOT** - A single lot of record which, at the effective date of adoption or amendment of this chapter, does not meet the area, frontage, width, depth, or impervious surface requirements of the district in which it is located.

**NONCONFORMING USE** - Use of buildings, structures, premises, land or parts thereof which is not allowed permitted 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 effect.

**NON-NATIVE INVASIVE SPECIES OF VEGETATION** - species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

**NORMAL HIGH-WATER MARK (LINE) NON-TIDAL WATERS** - That line which is apparent from visible markings, ~~or~~ 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 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.

**NORTH AMERICAN VERTICAL DATUM (NAVD)** - The national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

**NURSERY SCHOOL/PRESCHOOL** - A school for children who are ineligible to attend kindergarten classes as offered by either the public or private school systems in the City. For the purposes of this chapter, a nursery school shall be viewed as a day-care center.

**NURSING HOME (CONVALESCENT HOME, REST HOME)** - A facility which is operated in connection with a hospital, or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the state, for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require skilled nursing care and related medical services. The term "nursing home" or "nursing facility" is restricted to those facilities, the purpose of which is to provide skilled nursing care and related medical services for a period of not less than 24 hours per day to individuals admitted because of illness, disease or physical or mental infirmity and which provides a community service.

**ONE-HUNDRED-YEAR FLOOD** - See "base flood."

**OPEN SPACE** - Land used for recreation, resource protection, amenity and/or buffers. In no event shall any area of a lot constituting the minimum lot area of said lot nor any part of any existing or future road or right-of-way be counted as constituting open space.

**OPEN SPACE RATIO** - A ratio derived by dividing open space by the base site area.

**OUTDOOR LIGHTING** - The nighttime illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

**OUTLET STREAM** - Any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

**PARK** - A natural or landscaped area, buildings, or structures provided to meet the active or passive recreational needs of people and for the preservation and exhibition of natural areas or settings. Examples include but are not limited to wildlife sanctuaries, conservation areas, nature centers or preserves.

A. **PUBLIC** - A park provided by a unit of government.

B. **PRIVATE** - A park provided by a private entity.

**PARKING LOT** - A parcel or area of land designed for the parking of motor vehicles.

**PARKING SPACE, OFF-STREET** - A space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room.

**PERMANENT FOUNDATION** - Any of the following:

A. A full, poured concrete or masonry foundation;

B. A poured concrete frost wall or a mortared masonry frost wall, with or without a concrete floor;

C. A reinforced, floating concrete pad for which the City of Augusta may require an engineer's certification if it is to be placed on soil with high frost susceptibility; or

D. Any foundation which, pursuant to the Building Code for the City of Augusta, is permitted for other types of single-family dwellings.

**PERMITTEE** - Any person, firm, or corporation receiving a permit from the City of Augusta.

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

**PERSONAL SERVICES** - Establishments primarily engaged in providing individual services but not goods involving the care of a person or his or her personal goods and apparel. Examples include but are not limited to salons/spas, massage facilities, tailor shops and clothing rental services, and other services, unless the use is defined elsewhere in this chapter.

**PHARMACY** - A place where drugs and medicines are prepared and dispensed.

Nonprescription medicines, personal care items, cosmetics, food supplements, medical care devices, and nonmedical supplies may also be sold. A pharmacy may include the sale of convenience retail items, not including gasoline.

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

A. **TEMPORARY** - Structures which remain in or over the water for less than seven months in any period of 12 consecutive months.

B. **PERMANENT** - Structures which remain in or over the water for seven months or more in

any period of 12 consecutive months.

**PLANNED UNIT DEVELOPMENT** - A development in which clustering of units or uses permits better land use practices to be employed. See "clustered residential development."

**PREMISES** - Land with or without the buildings and structures thereon.

**PRINCIPAL BUILDING/STRUCTURE** - The building or structure occupied by the chief or principal use on the premises. *(MDEP definition: a structure other than which is used for purposes wholly incidental or accessory to the use of another structure of use on the same lot.)*

**PRINCIPAL USE** - The primary use to which the premises are devoted and the main purpose for which the premises exist. *(MDEP definition: A use other than one which is wholly incidental or accessory to another use on the same lot.)*

**PUBLIC FACILITY** - Any facility, including but not limited to buildings, property, recreation areas, and roads, which is owned, leased or otherwise operated or funded by a governmental body or public ~~nonprofit~~ entity.

**PUBLIC SAFETY SERVICES** - Facilities operated by public agencies to provide services relating to the general health, safety, and welfare of the population, including but not limited to fire stations and other fire prevention and firefighting facilities; police and sheriff substations and headquarters, including interim incarceration facilities; and emergency response services.

**PUBLIC UTILITY** - See "municipal or public utilities and communications facilities."

**REAL ESTATE OFFICES** - Establishments primarily engaged in acting as agents and/or brokers in one or more of the following: selling real estate for others; buying real estate for others; and renting real estate for others.

**RECENT FLOODPLAIN 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 AREA/FACILITY** - A place designed and equipped for the conduct of indoor and/or outdoor sports, leisure-time activities, and other customary and usual recreational activities, excluding boat launching facilities.

- A. **PRIVATE** - A recreation facility operated by a private organization and open only to members and guests.
- B. **PUBLIC** - A recreation facility operated by a public organization and open to the general public.

**RECREATIONAL VEHICLE** - A vehicle or an attachment to a vehicle built on a single chassis; 400 square feet or less when measured at the largest horizontal projection, not including slideouts; designed to be self-propelled or towed ~~by a motor vehicle;~~ and designed ~~primarily~~ for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer and motorhome. for recreational, camping, travel, or seasonal use. In order to be considered as a vehicle and not as a structure, the unit must remain ~~on its tires~~ with its tires on the ground and must be registered with the road-worthy (i.e., possess

~~a current registration sticker from any State Division of Motor Vehicles).~~

**RECYCLING CENTER** - A personal service use located and operated primarily for the convenience of residents of a community or region and devoted to the collection (or redemption) and separation of household nonorganic waste products for eventual reprocessing and recycling (off site) into new products for sale to the general public. Recycling centers which handle waste from business, commerce and industry are considered waste facilities. "Recycling center" does not include septage processing or composting facilities.

### **REGULATORY FLOODWAY**

- A. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year base-flood without cumulatively increasing the water surface elevation more than one foot in height; and
- B. In Zone A, the channel of a river or other watercourse and the adjacent land areas to a distance of 1/2 the width of the floodplain as measured from the normal high-water mark to the upland limit of the floodplain.

**RELIGIOUS ACTIVITIES AND ASSOCIATED USES** - A structure or place where persons regularly assemble for worship, ceremonies, rituals, education, and related social events pertaining to a particular system of beliefs, and which structure or place, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain religious ceremonies and purposes. "Religious activities and associated uses" includes but is not limited to churches, religious temples, convents, monasteries, parsonages, rectories, religious camps and retreat sites.

**REPLACEMENT SYSTEM** - A system intended to replace:

- A. An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or
- B. Any existing overboard wastewater discharge.

**RESEARCH, EXPERIMENTAL, AND TESTING LABORATORIES** - A building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

**RESIDENTIAL DWELLING UNIT** - See "dwelling unit."

**RESTAURANT** - An establishment where food and/or beverages are prepared, served, and consumed.

- A. **FAST-FOOD RESTAURANT** - Restaurants where most customers order and are served their food at a counter or in a motor vehicle in packages prepared to leave the premises or able to be taken to a table or counter to be consumed.
- B. **STANDARD RESTAURANT** - Restaurants where food and beverages are prepared, served, and consumed primarily within the principal building, and where table service rather than counter service is provided for ordering and serving the food. Standard restaurants also include cafeteria or buffet-style dining.

**RESUBDIVISION** - The further division of an existing parcel within an approved subdivision or any change to the location of the lot lines therein, or the relocation of any street or lot line in a subdivision.

**RETAIL** - Establishments engaged in the selling of goods or merchandise directly to the consumer and not for resale and in rendering services incidental to the sale of such goods.

**RETAIL, CONVENIENCE** - An establishment primarily engaged in selling food products, household items, newspapers and magazines, candy and beverages, and a limited amount of freshly prepared foods directly to the consumer for off-premises consumption. Convenience stores may provide for gasoline refueling facilities.

**RETAIL, MEDICAL SALES** - A retail establishment specializing in the sale of medical supplies, including prescription and nonprescription drugs. Examples include but are not limited to convalescent supply stores, food supplement stores, hearing aid stores, prosthetic stores, home health care supply stores, and sick room supply stores.

**RETAIL, SPECIALTY** - Retail operations that specialize in one type or line of merchandise. Specialty retail does not include auto sales.

**RIGHT-OF-WAY** - A public or private strip of land of a specified width, owned in fee or controlled by easement, which confers legally granted rights of passage and is occupied or intended to be occupied by a street, crosswalk, railroad, road, utility, or other special use. A right-of-way which is controlled by easement shall be recorded in the Kennebec County Registry of Deeds. Said easement on a private right-of-way shall be required to permanently run with the land.

**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 floodplain wetlands from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

**RIVERINE** - Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**ROAD** - A public or private right-of-way, usually of a rural design, a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

**ROOMING HOUSE** - A building in which three or more rooms are kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants for weekly or longer periods, with or without board, for compensation (as distinguished from hotels, motels and tourist homes in which rentals are generally on an overnight basis for transients).

**SALT MARSH** - Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (Spartina alterniflora). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

**SALT MEADOW** - Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

**SAPLING** - A tree species with a trunk that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level.

**SEASONAL** - A use of land or structures designed and arranged to be used for less than 10 months in the year.

**SEDIMENTATION** - The deposition of soil particles that have been transported from their site of origin by water, ice, wind, gravity, or other natural means.

**SEEDLING** - A young tree species that is less than four and one half (4.5) feet in height above ground level.

**SELF-SERVICE LAUNDROMATS** - Establishments primarily engaged in operating facilities with coin-operated or similar self-service laundry equipment for customer use on the premises.

**SELF-SERVICE STORAGE UNITS** - A building or group of buildings containing separate, individual, and private storage spaces of varying sizes available for lease or rent for varying periods of time where clients retain a key and can independently store and retrieve their goods.

**SERVICES** - Establishments primarily engaged in providing assistance, as opposed to products, to individuals, business, industry, government, and other enterprises. The sale of goods is permitted only when incidental to the providing of services. Examples of services include but are not limited to miscellaneous repair services (excluding automotive repair/services); parking services; rental services; animal boarding/riding services; motion-picture services; amusement and recreation services such as bowling centers, miniature golf courses, pool rooms, and campgrounds; cultural services such as art galleries and botanical and zoological gardens; and other service uses not specifically classified in the Table of Land Uses in the Base Zoning Districts.<sup>[4]</sup> [Amended 5-7-2015 by Ord. No. 15-070]

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

**A. In the case of electric service:**

- (1) 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**
- (2) The total length of the extension is less than one thousand (1,000) feet.**

**B. In the case of telephone service:**

- (1) The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or**
- (2) The extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.**

**SERVICE STATION** - See "automobile business."

**SETBACK** - The nearest horizontal distance from a lot line or normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

**SHOE REPAIR SHOPS** - Establishments primarily engaged in repairing footwear without retailing new footwear.

**SHOPPING CENTER** - A group of commercial establishments planned, developed, and managed as a unit.

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

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

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

**SIGN, ATTACHED SIGNS** - Any structure, device, letter, banner, symbol or other representation which is used or is in the nature of an advertisement, announcement or direction. "Sign" includes permanent, portable, temporary or mobile (including vehicular signs) signs. "Attached signs" includes those that are permanently attached to a building and supported entirely from it, including those which are mounted flat against a wall and those that are constructed without attachment to a building and are freestanding. "Sign" includes the full sign assembly, including base, poles and other mounting hardware, and message board. Murals painted for the purposes of art or architectural enhancement and containing no advertisement, announcement, or direction shall be excluded from regulation.

**SIGNIFICANT RIVER SEGMENTS** - See 38 M.R.S.A. § 437. NOTE: No significant river segments exist in Augusta.

**SINGLE-ROOM-OCCUPANCY (SRO) DWELLING UNIT** - A self-contained dwelling unit that provides ambulatory independent living for one resident per unit. Each SRO unit shall be a minimum of 150 square feet in size and a maximum of 375 square feet for non-handicapped-accessible units (or 425 square feet for handicapped-accessible units). Each unit may provide kitchenettes and private bathroom facilities in each unit and/or shared common bathrooms and kitchens. Multiple-family dwellings that incorporate multiple SRO dwelling units may include, but are not required to include, common gathering spaces for residents, program spaces, office space, and common laundry facilities.

**SMALL DISTILLERIES, BREWERIES AND BAKERIES** - Any distillery, brewery or bakery, with or without an associated restaurant or retail component, that occupies less than 5,000 square feet of floor space. Any retail element must be primarily for the sale of the product being produced on site. **[Added 10-16-2014 by Ord. No. 14-178]**

**SOCIAL SERVICES** - Establishments primarily engaged in providing nonresidential individual and family social assistance services to advance the welfare of citizens in need. A social service may include the following accessory uses: office, medical office, or clinic uses; vocational or trade training; supporting personal services; or a food and goods distribution facility.

**SPECIAL EXCEPTION** - A use which would not generally be appropriate in a particular zoning district, but which, as determined by a two-thirds majority of the Planning Board, if specifically designed to be compatible with both the adjacent physical neighborhood and is designed to advance the purposes of the particular zoning district being contemplated, would support the public safety, health, convenience, and welfare of that district. A special exception for a particular use shall be allowed in a district only if the regulations for that district specifically allow that use and only when the Planning Board finds that such use meets all of the requirements applicable to it as specified in this chapter.

**SPECIAL FLOOD HAZARD AREA** - See "area of special flood hazard."

**SPECIALIZED MEDICAL CLINIC** - A facility that dispenses methadone or medical marijuana to patients. A medical marijuana dispensary may also grow and process the product at the same facility. Typical accessory uses for a medical marijuana dispensary or grow facility may include, but are not limited to, counseling services associated with the medical conditions being treated with medical marijuana, processing and cooking facilities for preparing the marijuana, other treatments for the medical condition being treated with marijuana. In all cases, accessory uses must remain secondary, individually and in aggregate, to the primary use.

**SPECIALTY FOOD MARKET** - A retail operation specializing in a specific type or class of foods, such as an appetizer store; bakery; butcher; delicatessen; fish shop; gourmet shop; or foods associated with a particular nationality, religious observance, dietary practices, or cuisine.

**SPECIALTY PRINT SHOP** - A facility for the custom reproduction of written or graphic materials on a custom order basis for individuals or businesses. Typical processes include, but are not limited to, photocopying, blueprint, and facsimile sending and receiving, and including offset printing.

**START OF FLOODPLAIN CONSTRUCTION** - The date the building permit was issued, provided the actual start of floodplain construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the "actual start of floodplain construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

**STEEP SLOPE** - Land area where the inclination of the land's surface from the horizontal is 15% or greater. See "sustained slope."

**STORM-DAMAGED TREE** - A tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

**STORMWATER RUNOFF** - The waters derived from rains falling within a tributary drainage basin, flowing over the surface of the ground or collected in channels, watercourses or conduits.

**STREAM** - A free-flowing body of water from the outlet of a great pond or the ~~point of~~ confluence of two perennial streams as depicted on the most recent, highest resolution version of the national hydrography dataset available from the ~~edition of a~~ United States Geological Survey on the website of the United States Geological Survey (<http://nhd.usgs.gov>) or the national map 7.5-minute series topographic map, or, if not available, a fifteen-minute series topographic map, to the point where the stream meets the shoreland zone of another water body or wetland. body of water becomes a river. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream. Intermittent streams run six months or less during any twelve-month period. See "tributary stream."

**STREET** - For the purposes of this chapter and for determining minimum road frontage requirements, a street is considered to be any public or private right-of-way of a specified width, or a right-of-way shown on a recordable subdivision plan approved by the Planning Board. Approval of a private right-of-way meeting minimum road frontage requirements shall in no way be construed to imply acceptance by the City of Augusta for purposes of maintenance, improvements or other City services.

**STREET LINE** - The right-of-way line of a street.

**STRUCTURE** - Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected ~~with a fixed location~~ on or in the ground, exclusive of fences, ~~utility poles~~ and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors, and associated appurtenances, subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8, sidewalks and handicap ramps. The term includes structures permanently or temporarily located, such as decks, patios, signs, gas or liquid storage tanks that are principally stored above ground and satellite dishes. Any structure having a roof supported by columns or walls. Buildings separated only by party walls or abutting walls without openings shall be deemed to be separate buildings. For floodplain purposes, "structure" means a walled and roofed building and includes a gas or liquid storage tank that is principally above ground.

**SUBDIVISION** - The division of a tract or parcel of land into three or more lots within any five-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of

land into three or more dwelling units within a five-year period, the construction or placement of three or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into three or more dwelling units within a five-year period.

- A. In determining whether a tract or parcel of land is divided into three or more lots, the first dividing of the tract or parcel is considered to create the first two lots and the next dividing of either of these first two lots, by whomever accomplished, is considered to create a third lot, unless both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least five years immediately preceding the second division; or the division of the tract or parcel is otherwise exempt under this subchapter.<sup>[5]</sup>
- B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
- C. A lot of 40 or more acres must be counted as a lot, except when a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected not to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in 38 M.R.S.A. § 435 or a municipality's shoreland zoning ordinance.
- D. A division accomplished by devise, condemnation, order of court, gift to a person related to the donor of an interest in property held by the donor for a continuous period of five years prior to the division by gift, or gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this subsection is transferred within five years to another person not related to the donor of the exempt real estate as provided in this subsection, then the previously exempt division creates a lot or lots for the purposes of this definition. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this subsection cannot be given for consideration that is more than 1/2 the assessed value of the real estate.
- E. A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this subsection is transferred within five years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this definition.
- F. A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this subsection is transferred within five

years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this definition.

- G. In determining the number of dwelling units in a structure, the provisions of this definition regarding the determination of the number of lots apply, including exemptions from the definition of a "subdivision of land."
- H. Notwithstanding the provisions of this definition, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.
- I. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that expands the definition of "subdivision" to include the division of a structure for commercial or industrial use; or otherwise regulates land use activities. A municipality may not enact an ordinance that expands the definition of "subdivision" except as provided in this subchapter. A municipality that has a definition of "subdivision" that conflicts with the requirements of this subsection at the time this subsection takes effect shall comply with this subsection no later than January 1, 2006. Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2003, for the definition to remain valid for the grace period ending January 1, 2006. A filing required under this subsection must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located.
- J. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of "subdivision" under Subsections **D** and **E**, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

**SUBDIVISION, MAJOR** - Any subdivision involving the development of a street. A major subdivision shall also include those developments which create six or more lots or units, whether on an existing street or on or within a proposed street or street system.

**SUBDIVISION, MINOR** - Any subdivision not involving the development of a street and involving the creation of fewer than six lots or units.

**SUBSTANTIAL FLOODPLAIN DAMAGE** - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code

enforcement official and which are the minimum necessary to assure safe living conditions;  
or

- B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

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

**SUBSURFACE WASTEWATER DISPOSAL SYSTEM** - Any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system. A collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), private individual surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 M.R.S.A. § 414, any surface wastewater disposal system licensed under 38 M.R.S.A. § 413, Subsection 1-A, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S.A. Chapter 13, Subchapter 1.

**SUSTAINED SLOPE** - A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**TAXI AND LOCAL/COMMUTER BUS LINE SERVICE** - Establishments primarily engaged in providing local and suburban passenger transportation. Taxi services utilize cars, trucks, or vans and are generally not operated over regular routes and on regular schedules; establishments of taxicab owner/operators, taxicab fleet operators, or taxicab organizations are included in this industry. Buses are generally operated over regular routes and on regular schedules within a metropolitan area and adjacent nonurban areas.

**TECHNICAL STANDARDS HANDBOOK** - City of Augusta Technical Standards Handbook maintained by the City of Augusta City Services Department.

**TEMPORARY, HABITABLE TRAILERS BUILT ON A PERMANENT CHASSIS TO BE USED AS PORTABLE CLASSROOMS AND/OR OFFICES AND/OR MEDICAL DIAGNOSTIC UNITS FOR A SPECIFIED (LIMITED) TIME AND AS A PUBLIC FACILITY ONLY** - A mobile home, travel trailer, truck trailer, or other structure used as temporary offices to meet a short-term need.

**TEMPORARY OUTDOOR LIGHTING** - The specific illumination of an outside area or object by any man-made device located outdoors that produces light by any means for a period of less than seven days, with at least 180 days passing before being used again.

**TIDAL WATERS** – All waters affected by tidal action during the highest annual tide.

**TIMBER HARVESTING** - The cutting and removal of timber for the primary purpose of

~~selling or processing forest products, trees from their growing site, and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction. "Timber harvesting" does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to § 300-528C, *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.~~

**TOURIST HOME** - A building or group of attached or detached buildings containing in combination three to 16 lodging and/or dwelling units for occupancy for daily or weekly periods, with or without board, and primarily for occupancy by transients, as distinguished from multiple dwellings and rooming houses in which the occupancy is primarily by residents rather than transients. A tourist home is not owner-occupied. See "bed-and-breakfast"; see "hotel."

**TRACT OR PARCEL OF LAND** - All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.

**TREE** - A woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

**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 terrestrial upland vegetation or ~~presence of aquatic vegetation and~~ by the presence of a bed, devoid of topsoil, containing waterborne deposits or on exposed soil, parent material or bedrock, and which is connected hydrologically with other water bodies, flows to a water body or wetland as defined. ~~"Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.~~ This definition does not include the term "stream," as defined elsewhere in this chapter, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland.

**TRUCK TERMINAL** - A structure or land primarily used for the temporary storage and maintenance of motor transport carriers. Truck terminals may also be used for the temporary storage of goods awaiting transfer or wholesale distribution by means of motor carrier transportation.

~~**UPLAND EDGE** - The boundary between upland and wetland.~~

**UPLAND EDGE OF A WETLAND** - The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller.

**USE** - The purpose for which land or a building or structure or a part thereof is arranged,

designed, intended or occupied.

**VARIANCE** - For the purposes of this chapter, means a grant of relief by the Board of Zoning Appeals:

- A. From the terms of a floodplain management regulation; or
- B. From any dimensional requirement of this chapter, in accordance with 30-A M.R.S.A. § 4353, Subsection 4.

**VEGETATION** - All live trees, shrubs, ~~ground cover~~, and other plants, including, without limitation, trees both over and under four inches in diameter measured at 4.5 feet above ground level.

**VETERINARY** - Any building or portion of a building designed or used for the care, observation, or treatment of animals. Any facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment, or prevention of animal diseases. A veterinary facility is not a boarding facility.

**VIOLATION** - The failure of a structure, use or other development to fully comply with the regulations found in this chapter.

**WAREHOUSING** - Establishments primarily engaged in operating long-term merchandise and goods storage facilities wherein those goods and merchandise will primarily be used off site. These establishments generally handle goods in containers, such as boxes, barrels, and/or drums, using equipment, such as forklifts, pallets, and racks. They are not specialized in handling bulk products of any particular type, size, or quantity of goods or products.

**WASTE FACILITY** - Any land area, structure, location, equipment, or combination of them, including dumps and landfills, used for handling hazardous or solid waste, sludge, or septage; composting facilities; recycling centers for waste from business, commercial and industrial uses. Tire processing uses and junkyards are also considered waste facilities. A land area shall not become a waste facility solely because it is used by its owner for disposing of septage from the owner's residence. See § **300-526**.

- A. **CLASS 1** - Includes recycling centers (as defined); and paper, cardboard, glass, and metals recycling for business, commerce, and industry.
- B. **CLASS 2** - Includes composting facilities; junkyards; landfills; waste to energy plants; septage handling facilities; tire processing and storage facilities; and hazardous waste handling facilities.

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

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

**WATERCOURSE** - A channel, drainageway, stream, brook. Any defined area of land conveying surface water or runoff. A watercourse may be intermittent or perennial (perennial =

greater than six months in any twelve-month period).

**WETLAND** - A freshwater or coastal wetland. See “freshwater wetlands” or “coastal wetland”.

~~**WETLAND 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 a great pond or river are considered to be part of that great pond or river.~~

~~**WETLAND (FRESHWATER)**—Freshwater swamps, marshes, bogs and similar areas which are:~~

~~A.—Ten or more contiguous acres; or~~

~~B.—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~~

~~C.—Inundated or saturated by surface water 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. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria or to the definition of "stream."~~

**WHOLESALE** - Establishments primarily engaged in selling and/or distributing merchandise to retailers; industrial, commercial, institutional, or professional business users; or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

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

**YARD, FRONT** - A yard adjoining the front lot line, extending between the principal structure and the street.

**YARD, REAR** - A yard adjoining the rear lot line and extending between the rear lot line and the principal structure.

**YARD, SIDE** - A yard adjoining a side lot line extending from the front lot line to the rear lot line as required by district regulations.

## Article II Nonconformance

### § 300-305 **Purpose.**

It is the intent of this article to promote land use conformities, except that nonconforming conditions that existed before the effective date of this chapter shall be allowed to continue, subject to the requirements set forth in this article. Except as otherwise provided in this ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

### § 300-306 **Burden of proof.**

- A. In any proceeding before the Code Enforcement Officer/Planning Board, the burden of proof shall be on the applicant/proponent to establish that the application/use is in compliance with the requirements of this chapter.
- B. In the case of disagreement between the City Assessor's records and a property owner's statement that a nonconforming use of a property existed prior to the effective date of this chapter, the Code Enforcement Officer may require the applicant to submit evidence that the activity was ongoing. Acceptable forms of such evidence are copies of billings, invoices, IRS statements, state licenses and tax number certificates. The address of the property must appear on the evidence submitted.

### § 300-307 **Effective date of approval.**

All projects approved by the Planning Board in accordance with this article shall be commenced within two years of the date of the Planning Board decision and shall be substantially completed within five years of the date of the Planning Board decision, unless a permit extension has been granted by the Board. A permit extension must be requested before expiration of the original approval.

### § 300-308 **General regulations.**

- A. The use of land, buildings or structures, lawful at the time of the effective date of this chapter, may be continued although such use does not conform with the provisions of this chapter.
- B. To avoid undue difficulty, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building for which a building permit was legally issued prior to the effective date of this chapter, or any amendment thereto, unless an amendment expressly provides otherwise.
- C. Transfer of ownership. Ownership of land and structures which remain lawful but become nonconforming by the passage of this chapter may be transferred, and the new owner may perpetuate the nonconformity subject to the regulations herein. Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the con-conforming use or continue to use the non-conforming structure or lot subject to the provisions of this Ordinance.
- D. Repair and maintenance. This chapter allows the normal upkeep and maintenance of nonconforming uses and structures, including repairs or renovations 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.

**§ 300-309 Nonconforming uses.**  
**[Amended 12-6-1993 by Ord. No. 311]**

- A. Modifications to nonconforming uses. The following modifications to existing, lawful, nonconforming uses of land and structures require approval by the Planning Board in accordance with the conditional use process and criteria outlined in § 300-603:
- (1) Expansion of a building in nonconforming use. ~~Outside~~ ~~Except in~~ shoreland areas, expansions of buildings in nonconforming use are allowed upon approval by the Planning Board through the conditional use process. In shoreland areas, expansions of buildings in nonconforming use are prohibited, except that nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in § 300-310B.
  - (2) Increase in the area of land in nonconforming use. See definition of "area of land in nonconforming use."
  - (3) Change to another nonconforming use. A nonconforming use shall not be changed to another nonconforming use unless the Planning Board, utilizing the criteria applicable to conditional uses in § 300-603E, finds that the proposed use is equally or more appropriate to the district than the existing nonconforming use, and provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water-dependent uses as provided for in the appropriate district, than the former use.
  - ~~(4) Expansion of a conforming use into a district where it would be nonconforming. Except in the Resource Protection Shoreland Overlay District, a conforming use existing at the effective date of this chapter or established after the effective date of this chapter may be allowed to expand into a district where it would be nonconforming only if it is on land which is contiguous with and of the same ownership of record as the conforming use at the time of adoption of this chapter.~~
- B. Discontinuance of nonconforming use (see definition).
- (1) A lot, building or structure in or on which a nonconforming use ~~which~~ is discontinued for a period exceeding of one year or more, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. be resumed as noneonforming. The uses of the land or structures shall thereafter conform to the requirements for the district.
  - (2) 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-year period.

C. Rule of precedence.

- (1) Whenever a use of land or a structure, whether conforming or nonconforming, is converted to a new conforming use, such land or structure shall thereafter conform to the requirements of the district in which it is located, except when existing yards, setbacks and other dimensional requirements are nonconforming.
- (2) Whenever a nonconforming use of land, a building or structure is permitted pursuant to § 300-308 and such use is changed to any other nonconforming use, the new nonconforming use must comply with all yard and setback requirements, unless a variance is obtained pursuant to the provisions of this chapter.

§ 300-310 **Nonconforming structures.**

A. Reconstruction or Replacement of nonconforming structures.

- (1) Outside ~~Except in~~ shoreland areas, any nonconforming structure which is 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 one year of the date of said damage or destruction, provided that such replacement or reconstruction shall not enlarge the lesser of the gross floor area or volume or change the location or use (except to more conforming) of the prior nonconforming structure. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.
- (2) Outside ~~Except in~~ shoreland areas, any nonconforming structure for which the appropriate maintenance remedy, as determined by the Code Enforcement Officer, is replacement may be replaced, provided that such replacement shall not enlarge the size or change the location or use (except to more conforming) of the prior nonconforming structure.
- (3) In shoreland areas, the following shall apply:
  - (a) Any nonconforming structure which is located less than the required setback from the normal high-water line ~~from of~~ a water body, tributary stream, or ~~upland edge of a~~ wetland and which is removed or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within 18 months ~~one year~~ of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this chapter and the criteria applicable to conditional uses. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall

not be any larger than the original structure, except as allowed pursuant to § 300-310B(2), Expansions, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total footprint 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 § 300-310E, Relocations.

- (b) Any nonconforming structure which is located less than the required setback from the 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 with a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.
- (c) In determining whether the building reconstruction replacement meets the ~~water~~ setback to the greatest practical extent, the Planning Board or its designee shall consider, in addition, the criteria relative to § 300-310E R#relocations (Subsection E of this section) and the physical condition and type of foundation present, if any.

B. Expansion of structures with nonconforming setback.

- (1) Outside ~~Except in~~ shoreland areas, a structure which does not meet the yard or setback requirements specified herein may be expanded, provided that the portion of the structure which does not meet the required setbacks is not expanded in footprint floor area or volume by 30% or more during the lifetime of the structure without Planning Board approval in accordance with the criteria applicable to conditional uses. The portion of the nonconforming structure which meets the required setbacks may be expanded without limitation, provided that all other applicable standards are met. In no case shall the existing nonconforming setbacks be further reduced.
- (2) ~~In~~ shoreland areas, all new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in § 300-528Q, Minimum Dimensional Requirements. A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in accordance with subparagraphs (a) and (b) below. Further limitations:
  - (a) Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body,

tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.

(b) Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by § 300-310B.

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

(c) All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by § 300-310B or § 300-310B(a), above.

(i) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

(ii) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in § 300-310B(b)(i) and § 300-310B(c)(i), above.

(iii) In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in § 300-310B(b)(i) and § 300-310B(c)(i), above.

(d) An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

~~(1) After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume by 30% or more during the lifetime of the structure.~~

~~(2) Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure, provided that the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in the section on relocation (Subsection E of this section); that the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three additional feet. (Relocated to end of section F. Foundations)~~

~~(3)~~(2) No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.

- C. Expansion of structures with nonconforming floor areas ratios. Structures existing on the effective date of adoption or amendment of this chapter which exceed the maximum floor area ratios may be permitted to increase the nonconforming ratios by obtaining a variance

from the Board of Zoning Appeals.

D. Change of use of a nonconforming structure. In shoreland areas:

- (1) The use (whether a permitted use, conditional use or a nonconforming use) of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.
- (2) In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

E. Relocation. In all general zoning districts, 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 extent possible as determined by the Code Enforcement Officer. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback to the greatest practical extent, the Code Enforcement Officer shall consider the size of the lot, the effect on other applicable performance standards, the location of other structures on the property and on adjacent properties, the location of utilities on or serving the site.

- (1) In shoreland overlay districts, 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 or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules (rules) or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.
- (2) In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee ~~Code Enforcement Officer~~ shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.
- (3) When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with § 300-

328S, Revegetation Requirements. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

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

(b) 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.

(c) 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.

F. Foundations. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in § 300-310E, Relocation, above.

~~(2)~~

**§ 300-311 Nonconformance due to lack of required off-street parking or loading space.**

- A. Except in the KBD1, a structure or use of structure which is nonconforming as to the requirements for off-street parking space and/or off-street loading space shall not be enlarged or altered to create additional parking needs unless required off-street parking and/or off-street loading space sufficient to satisfy the requirements of this chapter for the addition or enlargement is provided on site for such addition or enlargements.
- B. Off-lot parking may be authorized by the Planning Board in accordance with §§ **300-603E** and **300-513B(1)(c)**.

**§ 300-312 Nonconforming lots of record.**

*Commentary: Nonconforming lots of record are created by requiring lots to meet minimum dimensional standards, as in conventional zoning. Nonconforming lots are not created under performance zoning (impervious surface ratios, floor area factors, open space ratios) since all lots are developable to the extent that the ratios permit. The following section applies to the conventional zones, Shoreland Zones and to those parcels regulated by the State of Maine Subsurface Wastewater Disposal Rules.*

- A. Where minimum dimensional requirements are listed, an unimproved single lot of record

which, at the effective date of adoption of this chapter or amendment thereto, does not meet the area and/or frontage and/or depth requirements of the district in which it is located may be built upon without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership. Outside the shoreland zone and that all provisions of this chapter, except lot area-size, frontage and depth, ~~can~~ must be met. In shoreland zones, all provisions of this chapter except lot area, lot width and shorefrontage must be met. Variances relating to setback or other requirements not involving lot area-size, frontage, or depth shall be obtained only by action of the Board of Zoning Appeals.

B. Contiguous lots, vacant or partially built. If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this chapter, ~~and~~ if any of these lots do not individually meet the dimensional requirements of this chapter or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the minimum dimensional requirements. The lands involved shall be considered to be a single parcel, and no portion of said parcel shall be built upon or sold which does not meet the minimum dimensional requirements of this chapter, nor shall any division of the parcel be made which creates any dimension or area below these minimum dimensional requirements. See Subsection **D** of this section.

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

(a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(b) Any lots that do not meet the frontage and lot size requirements of § 300-312B(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

~~B.~~

C. Contiguous built lots.

(1) If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this chapter, ~~and~~ if all or part of the lots do not meet the dimensional requirements of this chapter, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the *State Minimum Lot Size Law* (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

(2) If two or more principal uses or structures existed on a single lot of record on the effective date of this chapter, each may be sold as separate lots, provided that the above-referenced law and rules are complied with. When such lots are divided, each

lot thus created must be as conforming as possible to the dimensional requirements of this chapter.

D. Previously approved/recorded/existing subdivisions.

- (1) Notwithstanding other provisions of this chapter, lots in a lawfully recorded subdivision approved, existing or recorded prior to September 23, 1971, shall conform with Subsections **B** and **C**, or if located in the RPDS District shall be combined so as to meet a minimum lot area of two acres. Such lots in the RPDS District shall not clear in excess of 25% of the total volume of trees four inches or more in diameter, measured at 4 1/2 feet above the ground, and the total area of all structures, parking lots and other nonvegetated surfaces shall not exceed 7,500 square feet. All other dimensional requirements shall be met.
- (2) Notwithstanding other provisions of this chapter, lots in a lawfully recorded subdivision approved by the Planning Board between September 23, 1971, and November 9, 1983, which do not meet the lot frontage requirements may be treated as separate lots, provided that the recorded road frontage is at least 75 feet and that all other dimensional requirements applicable under the November 9, 1983, ordinance are met.
- (3) Notwithstanding other provisions of this chapter, lots in a lawfully recorded subdivision approved by the Planning Board between November 9, 1983, and the effective date of this chapter which do not meet the minimum lot area, frontage and depth requirements effective under this chapter may be treated as separate lots, provided that all other dimensional requirements (impervious surface limits, buffer widths, density, setback, etc.) are met.

**Part 3**  
**Article III**

§ 300-316 **Overlay Districts.**

§ 300-316.1 **Shoreland Districts.**

[Amended 6-20-1994 by Ord. No. 546; 5-17-2004 by Ord. No. 72]

A. General provisions.

- (1) All land use activities, as indicated in Attachment 4, Land Uses in the Shoreland Zone ~~the tables that follow~~, shall conform with all of the applicable land use standards outlined in Part 5. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Shoreland Overlay Zones

LR – Limited Residential

RP – Resource Protection

GD – General Development

LC – Limited Commercial

(4) SP – Stream Protection

- (2) Dimensional requirements.

(a) Minimum dimensional requirements as listed in § **300-528** may be superseded by stronger standards based on the specifics of the site and with respect to slope and soil conditions in accordance with § **300-506D**.

(b) In no case shall lots created in a subdivision in the Shoreland District, after July 14, 1990, have a lot depth to shore frontage ratio of greater than five to one, pursuant to 30-A M.R.S.A. § 4404, Subsection 17.

- (3) A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. § 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them: [The DEP has determined that "adjacent," as used in Subsection **A(3)**, means within 75 feet.]

(a) Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;

(b) Draining or otherwise dewatering;

- (c) Filling, including adding sand or other material to a sand dune; or
- (d) Any construction or alteration of any permanent structure.

B. Limited Residential District (LR).

(1) Purpose. The LR 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 it includes areas which are used less intensively than those in the Limited Commercial District, or the General Development District.

~~(2) Uses:~~

~~(a) Uses by right; no permit needed; all applicable land use standards must be met:~~

~~{1} Nonintensive recreational uses not requiring structures, such as hunting, fishing and hiking.~~

~~{2} Motorized vehicular traffic on existing roads and trails.~~

~~{3} Forest management activities, including timber harvesting.~~

~~{4} Clearing of vegetation for approved construction and other permitted uses.~~

~~{5} Fire prevention activities.~~

~~{6} Wildlife management practices.~~

~~{7} Soil and water conservation practices.~~

~~{8} Surveying and resource analysis.~~

~~{9} Agriculture.~~

~~{10} Emergency operations.~~

~~{11} Mineral exploration less than 100 square feet total disturbed surface area.~~

~~{12} Service drops, as defined, to permitted uses.~~

~~{13} Utilities and communications facilities as outlined in § 300-525A.~~

~~{14} Filling and earthmoving of less than 10 cubic yards.~~

~~(b) Permitted uses requiring permit by CEO:~~

~~{1} One and two family dwellings.~~

~~{2} Structures accessory to permitted uses.~~

- ~~{3}—Small nonresidential facilities for educational, scientific, or nature interpretation purposes.~~
- ~~{4}—Signs.~~
- ~~{5}—Temporary piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high water line or within a wetland.~~
- ~~{6}—Individual, private campsite.~~
- ~~{7}—Filling and earthmoving of more than 10 cubic yards.~~
- ~~{8}—Uses similar to uses by right and uses requiring a CEO permit.~~
- ~~{9}—Home occupations.~~
- ~~{10}—Mineral exploration when more than 100 square feet total surface area disturbed.~~
- ~~(c)—Permitted uses requiring permit by LPI:~~
  - ~~{1}—Seasonal residence conversions to year-round residences.~~
  - ~~{2}—Private sewage disposal systems for permitted uses.~~
- ~~(d)—Conditional uses requiring Planning Board review; mandatory public hearing:~~
  - ~~{1}—Aquaculture.~~
  - ~~{2}—Campgrounds.~~
  - ~~{3}—Parking facilities.~~
  - ~~{4}—Marinas.~~
  - ~~{5}—Mineral extraction, including sand and gravel extraction.~~
  - ~~{6}—Permanent piers, docks, wharfs, bridges and other uses and structures extending over or below the normal high water line or within a wetland.~~
  - ~~{7}—Public and private recreational areas with minimal structural development.~~
- ~~(e)—Uses requiring Planning Board approval; use criteria in § 300-603E(5)(e){1} through {8}; public hearing not mandatory:~~
  - ~~{1}—Multiunit residential.~~
  - ~~{2}—New essential services.~~
  - ~~{3}—New road construction.~~

~~[4] Uses similar to uses requiring Planning Board approval.~~

C. Resource Protection District (RP).

(1) Purpose. The RP District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or areas with 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 and areas which meet the criteria for the Limited Commercial or General Development Districts need not be included within the Resource Protection District:

(a) Areas within 250 feet, horizontal distance, of the upland edge of freshwater and/or coastal 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) ~~as of and since January 1, 1973.~~ These areas are generally depicted on a Geographic Information System (GIS) data layer.

~~[1] NOTE: The Natural Resources Protection Act, 38 M.R.S.A. §§ 480-A through 480-S, requires the Department of Environmental Protection to designate areas of significant wildlife habitat. Significant wildlife habitat includes:~~

~~[a] Habitat for species appearing on the official state or federal lists of endangered or threatened species;~~

~~[b] High and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife;~~

~~[c] High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife;~~

~~[d] Critical spawning and nursery areas for Atlantic Sea Run Salmon as defined by the Atlantic Sea Run Salmon Commission; and~~

~~[e] Shorebird nesting, feeding and staging areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife.~~

~~[2] As these areas are mapped and development standards are established, the City of Augusta shall incorporate such areas and standards into this chapter.~~

(b) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the ~~one hundred-~~ 100 year floodplain as designated on

the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as "recent floodplain soils" (defined). This district shall also include ~~one hundred~~ 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

- (c) Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- (d) Areas of two or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during normal spring high water.
- (e) 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.
- (f) The following other areas which have been recommended for protection in the ~~1988 Growth Management~~ 2007 Comprehensive Plan:
  - [1] Other ~~Important~~ wildlife habitat;
  - [2] Natural sites of significant scenic or aesthetic value;
  - [3] Areas designated by federal, state or municipal governments as natural areas of significance to be protected from development; and
  - [4] Other significant areas which should be included in this district to fulfill the purposes of this chapter, such as but not limited to existing public access areas and certain significant archeological and historic sites deserving of long-term protection as determined by the City of Augusta, after consultation with the Maine Historic Preservation Commission.

**NOTE:** As these areas are mapped and development standards are established, the City of Augusta shall incorporate such areas and standards into this chapter.

- (2) Uses. Unless specifically enumerated, principal structures, including residential dwelling units, commercial, industrial and institutional structures are prohibited in the RP District. Therefore, there are no dimensional requirements for new structures and uses within the district. Dimensional requirements for legally existing nonconforming uses and structures are listed in § **300-528**.

- ~~(a) Uses by right; no permit needed; all applicable land use standards must be met:
  - [1] Nonintensive recreational uses not requiring structures, such as hunting, fishing and hiking.~~

- ~~{2}—Motorized vehicular traffic on existing roads and trails.~~
- ~~{3}—Forest management activities.~~
- ~~{4}—Fire prevention activities.~~
- ~~{5}—Wildlife management practices.~~
- ~~{6}—Soil and water conservation practices.~~
- ~~{7}—Surveying and resource analysis.~~
- ~~{8}—Mineral exploration less than 100 square feet total surface area disturbed.~~
- ~~{9}—Emergency operations.~~
- ~~{10}—Service drops, as defined, to permitted uses.~~

~~(b) — Permitted uses requiring permit by CEO:~~

- ~~{1}—Timber harvesting if more than 75 feet back from the normal high water line of great ponds.~~
- ~~{2}—Signs.~~
- ~~{3}—Filling and earthmoving of less than 10 cubic yards.~~
- ~~{4}—Clearing of vegetation for approved construction and other allowed uses.~~
- ~~{5}—Temporary piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high water line or within a wetland.~~
- ~~{6}—Individual, private campsites.~~
- ~~{7}—Uses similar to uses by right and uses requiring a CEO permit.~~

~~(c) — Conditional uses requiring Planning Board review; use criteria in § 300-603E(5)(c):~~

- ~~{1}—Agriculture.~~
- ~~{2}—Aquaculture.~~
- ~~{3}—Structures accessory to permitted uses.~~
- ~~{4}—Uses similar to uses requiring a Planning Board permit.~~
- ~~{5}—Small nonresidential facilities for educational, scientific or nature interpretation purposes.~~

~~{6}—New essential services, unless restricted by performance standards.~~

~~{7}—Public/private recreational areas involving minimal structural development.~~

~~{8}—Permanent piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high water line or within a wetland.~~

~~{9}—Filling and earthmoving activity of more than 10 cubic yards.~~

~~{10}—Mineral extraction, including sand and gravel extraction, unless area is designated RP due to its wildlife values.~~

~~{11}—Campgrounds and parking facilities, only if area is zoned RP due to floodplain criteria.~~

~~{12}—New road and driveway construction, only where no reasonable alternative route or location is available outside the RP area.~~

D. General Development District (GD).

(1) Purpose. The General Development District includes the following types of existing, intensely developed areas:

(a) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:

[1] Areas devoted to manufacturing, fabricating or other industrial activities;

[2] Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and

[3] Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, racetracks and fairgrounds.

(b) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

(c) Portions of the General Development District may also include residential development. However, no area shall be designated as General Development District based solely on residential use.

(d) In areas adjacent to great ponds classified GPA (as defined) and adjacent to rivers ~~and perennial streams~~ flowing to great ponds classified GPA, the designation of an area as a General Development District shall be based upon uses existing at the time of adoption of this chapter. There shall be no newly established General Development Districts or expansions in area of existing

General Development Districts adjacent great ponds classified GPA, and adjacent to rivers ~~and perennial streams which that~~ flow to great ponds classified GPA.

~~(2) — Uses:~~

~~(a) — Uses by right; no permit needed; all applicable land use standards must be met:~~

~~[1] — Nonintensive recreational uses not requiring structures, such as hunting, fishing and hiking.~~

~~[2] — Forest management activities; timber harvesting.~~

~~[3] — Motorized vehicular traffic on existing roads and trails.~~

~~[4] — Home occupations.~~

~~[5] — Clearing of vegetation for approved construction and other permitted uses.~~

~~[6] — Fire prevention activities.~~

~~[7] — Wildlife management practices.~~

~~[8] — Soil and water conservation practices.~~

~~[9] — Surveying and resource analysis.~~

~~[10] — Mineral exploration if less than 100 square feet surface area in total is disturbed.~~

~~[11] — Emergency operations.~~

~~[12] — Agriculture.~~

~~[13] — Aquaculture.~~

~~[14] — Service drops, as defined, to permitted uses.~~

~~[15] — Filling and earthmoving of less than 10 cubic yards.~~

~~[16] — Utilities and communications facilities as described in § 300-525A.~~

~~(b) — Permitted uses requiring permit by CEO:~~

~~[1] — One and two family structures.~~

~~[2] — Individual, private campsites.~~

~~[3] — Signs.~~

- ~~[4]—Small nonresidential facilities for educational, scientific, or nature interpretation purposes.~~
- ~~[5]—Filling and earthmoving of more than 10 cubic yards.~~
- ~~[6]—Structures accessory to permitted uses.~~
- ~~[7]—Temporary piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high water line or within a wetland.~~
- ~~[8]—Public and private recreational areas involving minimal structural development.~~
- ~~[9]—Uses similar to uses by right and uses requiring a CEO permit.~~
- ~~[10]—Commercial, industrial, government and institutional uses.~~
- ~~(e)—Permitted uses requiring permit by LPI:~~
  - ~~[1]—Conversions of seasonal residences to year-round residences.~~
  - ~~[2]—Private sewage disposal systems for allowed uses.~~
- ~~(d)—Conditional uses requiring Planning Board review; public hearing required unless otherwise specified:~~
  - ~~[1]—Multiunit residential: review as subdivision; public hearing not mandatory.~~
  - ~~[2]—Permanent piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high water line or within a wetland.~~
  - ~~[3]—New essential services.~~
  - ~~[4]—New road construction.~~
  - ~~[5]—Parking facilities.~~
  - ~~[6]—Marinas.~~
  - ~~[7]—Campgrounds.~~
  - ~~[8]—Uses similar to uses requiring a Planning Board permit.~~

E. Limited Commercial District (LC).

- (1) Purpose. The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District, which should not be developed as intensively as the General Development District. The district includes areas of two or more contiguous acres in size devoted to a mix of residential and low-intensity business and commercial areas. Industrial uses are prohibited.

~~(2) Uses:~~

~~(a) Uses by right; no permit needed; all applicable land use standards must be met:~~

- ~~{1} Nonintensive recreational uses not requiring structures, such as hunting, fishing and hiking.~~
- ~~{2} Forest management activities and timber harvesting.~~
- ~~{3} Motorized vehicular traffic on existing roads and trails.~~
- ~~{4} Clearing of vegetation for approved construction and other permitted uses.~~
- ~~{5} Fire prevention activities.~~
- ~~{6} Wildlife management practices.~~
- ~~{7} Soil and water conservation practices.~~
- ~~{8} Surveying and resource analysis.~~
- ~~{9} Mineral exploration if less than 100 square feet surface area in total is disturbed.~~
- ~~{10} Emergency operations.~~
- ~~{11} Agriculture.~~
- ~~{12} Aquaculture.~~
- ~~{13} Service drops, as defined, to allowed uses.~~
- ~~{14} Filling and earthmoving of less than 10 cubic yards.~~
- ~~{15} Utilities and communications facilities as described in § 300-525A.~~

~~(b) Permitted uses requiring permit by CEO:~~

- ~~{1} One and two family residential.~~
- ~~{2} Structures accessory to permitted uses.~~
- ~~{3} Small nonresidential facilities for educational, scientific, or nature interpretation purposes.~~
- ~~{4} Home occupations.~~
- ~~{5} Signs.~~

~~{6}—Temporary piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high water line or within a wetland.~~

~~{7}—Public and private recreational areas involving minimal structural development.~~

~~{8}—Individual, private campsites.~~

~~{9}—Filling and earthmoving of more than 10 cubic yards.~~

~~{10}—Uses similar to uses by right and to uses requiring a CEO permit.~~

~~{11}—Mineral exploration when more than 100 square feet total surface area disturbed.~~

~~(c) —Permitted uses requiring permit by LPI:~~

~~{1}—Private sewage disposal systems for allowed uses.~~

~~{2}—Conversions of seasonal residences to year-round residences.~~

~~(d) —Conditional uses requiring Planning Board review; public hearing required unless otherwise specified:~~

~~{1}—Mineral extraction, including sand and gravel extraction.~~

~~{2}—Marinas.~~

~~{3}—Commercial uses.~~

~~{4}—Governmental and institutional uses.~~

~~{5}—Campgrounds.~~

~~{6}—Permanent piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high water line or within a wetland.~~

~~{7}—Parking facilities.~~

~~{8}—Uses similar to uses requiring a Planning Board permit.~~

~~(e) —Public hearing not mandatory for the following uses; use criteria in § 300-603E(5)(c)[1] through [8]:~~

~~{1}—New essential services.~~

~~{2}—Multiunit residential.~~

~~{3}—New road construction.~~

F. Stream Protection District (SP).

(1) Purpose.

(a) The Stream Protection District includes all land areas within ~~100 feet (SP 100)~~ 75 feet, horizontal distance, of the normal high-water line of a stream ~~(as defined)~~, exclusive of those areas within 250 feet, horizontal distance, of the normal high-water line of a great pond, or river ~~or saltwater body~~ or within 250 feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area is located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the Shoreland District associated with that water body ~~of water~~ or wetland.

~~(b)~~—The Stream Protection District also includes major and minor tributaries of streams (as defined) as well as drainageways depicted on the City's 200 scale topographic maps and/or the USGS Topographic Quadrangle maps. In the case of these tributaries and drainageways, the SP District has been reduced to land areas within 25 feet horizontal distance of the normal high-water line of the tributary and shall be considered the SP 50 District. In the SP 50 District, no less than a twenty-five-foot buffer shall be maintained adjacent to the tributary or drainageway. Such buffer shall not be disturbed except to remove safety hazards. If such a tributary or drainageway is determined, upon field investigation by the CEO, to be an intermittent stream, the required buffer may be reduced to 15 feet.

~~(2) — Uses.~~

~~(a) — Uses by right; no permit needed; all applicable shoreland standards must be met:~~

~~[1] — Nonintensive recreational uses not requiring structures, such as hunting, fishing and hiking.~~

~~[2] — Timber harvesting.~~

~~[3] — Motorized vehicular traffic on existing roads and trails.~~

~~[4] — Forest management activities.~~

~~[5] — Surveying and resource analysis.~~

~~[6] — Fire prevention activities.~~

~~[7] — Emergency operations.~~

~~[8] — Agriculture.~~

- ~~[9]—Service drops to permitted uses.~~
- ~~[10]—Wildlife management practices.~~
- ~~[11]—Soil and water conservation practices.~~
- ~~(b)—Permitted uses requiring permit by CEO:~~
  - ~~[1]—Clearing of vegetation for approved construction and other allowed uses.~~
  - ~~[2]—Temporary piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high water line or within a wetland.~~
  - ~~[3]—Signs.~~
  - ~~[4]—Individual, private campsites.~~
  - ~~[5]—Filling and earthmoving of less than 10 cubic yards.~~
  - ~~[6]—Uses similar to allowed uses.~~
  - ~~[7]—Uses similar to uses requiring CEO permit.~~
  - ~~[8]—One and two family dwellings; must obtain a variance if within 75 feet.~~
- ~~(c)—Permitted uses requiring permit by LPI:~~
  - ~~[1]—Conversions of seasonal residences to year-round residences.~~
  - ~~[2]—Private sewage disposal systems for allowed uses.~~
- ~~(d)—Conditional uses requiring Planning Board review:~~
  - ~~[1]—Small nonresidential facilities for educational, scientific, or nature interpretation purposes; must obtain a variance if within 75 feet.~~
  - ~~[2]—Permanent piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high water line or within a wetland.~~
  - ~~[3]—Home occupations.~~
  - ~~[4]—New essential services (with special restrictions, § 300-528).~~
  - ~~[5]—Public and private recreational areas involving minimal structural development.~~
  - ~~[6]—Aquaculture.~~
  - ~~[7]—Marinas.~~

[8]—New road construction.

[9]—Filling and earthmoving of more than 10 cubic yards.

[10] Uses similar to uses requiring Planning Board permit.

**TABLE 1: LAND USES IN THE SHORELAND ZONE**

LAND USES	LR	RP	GD	LC	SP
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking.	yes	yes	yes	yes	yes
2. Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes	yes
3. <del>Forest management activities except for timber harvesting and land management roads</del>	yes	yes	yes	yes	yes
4. <del>Timber harvesting</del>	yes	CEO	yes	yes	yes
5. Clearing or removal for vegetation for activities other than timber harvesting	yes	CEO <sup>1</sup>	yes	yes	CEO
6. Fire prevention activities	yes	yes	yes	yes	yes
7. Wildlife management practices	yes	yes	yes	yes	yes
8. Soil and water conservation practices	yes	yes	yes	yes	yes
9. Mineral exploration	yes <sup>10</sup>	yes <sup>10</sup>	yes <sup>10</sup>	yes <sup>10</sup>	no
10. Mineral extraction including sand and gravel extraction	PB	PB <sup>2</sup>	no PB	PB	no
11. Surveying and resource analysis	yes	yes	yes	yes	yes
12. Emergency operations	yes	yes	yes	yes	yes
13. Agriculture	yes	PB	yes	yes	yes
14. Aquaculture	PB	PB	yes	yes	PB
15. Principal structures and uses					
A. One and two family residential, including driveways	CEO	no PB <sup>3</sup>	CEO	CEO	CEO <sup>12</sup> PB
B. Multi-unit residential	PB <sup>11</sup>	no	PB	PB <sup>11</sup>	no
C. Commercial	no <sup>4</sup>	no <sup>4</sup>	CEO PB	PB	no
D. Industrial	no	no	CEO PB	no	no
E. Governmental and institutional	no PB	no	CEO PB	PB	no
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	CEO	PB	CEO	CEO	PB <sup>12</sup>
16. Structures accessory to allowed uses	CEO	PB	CEO yes	CEO	no PB
17. Piers, docks, wharfs, bridges and other structures and uses extending over of below the normal high-water line or within a wetland					
A. Temporary	CEO <sup>5</sup>	CEO <sup>5</sup>	CEO <sup>5</sup>	CEO <sup>5</sup>	CEO <sup>5</sup>
B. Permanent	PB	PB	PB	PB	PB
18. Conversions of seasonal residences to year-round residences	LPI	no LPI	LPI	LPI	LPI
19. Home occupations	CEO PB	no PB	yes	CEO	PB
20. Private sewage disposal systems for allowed uses	LPI	no LPI	LPI	LPI	LPI
21. Essential services	PB <sup>11</sup>	no PB <sup>6</sup>	PB	PB <sup>11</sup>	PB <sup>6</sup>
A. Roadside distribution lines (34.5kV and lower)	yes <sup>7</sup>	CEO <sup>6</sup>	yes <sup>7</sup>	yes <sup>7</sup>	CEO <sup>6</sup>
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	CEO	PB <sup>6</sup>	CEO	CEO	PB <sup>6</sup>
C. Non-roadside or cross country distribution lines involving eleven or more poles in the shoreland zone	PB	PB <sup>6</sup>	PB	PB	PB <sup>6</sup>
D. Other essential services	PB	PB <sup>6</sup>	PB	PB	PB <sup>6</sup>
22. Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes
23. Public and private recreational areas involving minimal structural development	PB	PB	CEO	CEO	PB
24. Individual, private campsites	CEO	CEO	CEO	CEO	CEO
25. Campgrounds	PB	no <sup>8</sup>	PB	PB	no
26. Road construction	PB-#	no <sup>9</sup>	PB	PB-#	PB
27. <del>Land management roads</del>	yes	PB	yes	yes	yes
28. Parking facilities	PB	no <sup>8</sup>	PB	PB	no
29. Marinas	PB	no	PB	PB	PB
30. Filling and earth moving of <10 cubic yards	yes	CEO	yes	yes	CEO
31. Filling and earth moving of >10 cubic yards	CEO	PB	CEO	CEO	PB
32. Signs	CEO yes	CEO yes	CEO yes	CEO yes	CEO yes
33. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring a Code Enforcement Officer permit	CEO	CEO	CEO	CEO	CEO
35. Uses similar to uses requiring a Planning Board permit	PB <sup>11</sup>	PB	PB	PB	PB

<sup>1</sup> In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

<sup>2</sup> In RP not allowed in areas so designated because of wildlife value.

<sup>3</sup> Single family residential structures may be allowed by special exemption only according to the provisions of § 300-604, Special Exceptions. Two-family residential structures are prohibited.

<sup>4</sup> Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

<sup>5</sup> Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

<sup>6</sup> See further restrictions in § 300-528F(2).

<sup>7</sup> Permit not required, but must file a written “notice of intent to construct” with Code Enforcement Officer.

<sup>8</sup> Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the Planning Board.

<sup>9</sup> Except as provided in § 300-528J(7).

<sup>10</sup> Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

~~<sup>11</sup> Public hearing not mandatory.~~

<sup>12</sup> Provided that a variance from the setback requirement is obtained from the Board of Zoning Appeals.

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S. A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, rivers, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.

## SHORELAND OVERLAY ZONES

- LR Limited Residential
- RP Resource Protection
- GD General Development
- LC Limited Commercial
- SP Stream Protection

## LAND USE KEY

- Yes Allowed (no permit required but the use must comply with all applicable land use standards)
- No Prohibited
- PB Allowed with permit issued by the Planning Board
- CEO Allowed with permit issued by Code Enforcement Officer
- LPI Allowed with permit issued by the Local Plumbing Inspector

Article VIII  
Overlay Zoning Standards

§ 300-528 **Special standards applicable to shoreland areas.**  
[Amended 5-17-2004 by Ord. No. 72; 4-19-2005 by Ord. No. 061; 3-20-2006 by Ord. No. 040]

Notwithstanding other provisions of this chapter, the following performance standards shall apply to structures and uses of land in shoreland areas. Where the provisions of this section impose a stricter standard than another applicable provision of this chapter, the requirement of this section shall prevail.

A. Agriculture.

- (1) The following regulations shall apply to all agriculture uses proposed in the City.
- (2) All spreading or disposal of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. section 4201-4209). Maine Guidelines for Manure and Manure Sludge Disposal on Land published by the University of Maine and the Maine Soil and Water Conservation Commission, July 1972.
- (3) Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within 75 feet horizontal distance, of other water bodies, tributary streams, or wetlands. ~~Within five years of the effective date of this chapter, all~~ All manure storage areas within the ~~S~~Sshoreland ~~Z~~Zzone must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater. ~~Existing facilities which do not meet the setback requirement may remain but must meet the no discharge provision within the above five year period.~~
- (4) Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area, ~~or the spreading, disposal or storage of manure~~ within the ~~S~~Sshoreland ~~Z~~Zzone shall require a ~~soil and water e~~soil and water eConservation ~~p~~plan to be filed with the Planning ~~Bureau~~Board. Non-conformance with the provisions of said plan shall be considered a violation of this ~~Ordinance chapter.~~ (Note: Assistance in preparing a ~~soil and water e~~soil and water eConservation ~~p~~plan may be available through the Kennebec County Soil and Water Conservation District office.)
- (5) There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA, within 75 feet, horizontal distance, from other water bodies, nor within 25 feet, horizontal distance, of tributary streams and wetlands. Operations in existence on the effective date of this ~~ordinance chapter~~ and not in conformance with this provision may be maintained.
- (6) ~~After the effective date of this chapter, newly~~ Newly established livestock grazing areas

shall not be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA, within 75 feet, horizontal distance, of other water bodies, or within 25 feet, horizontal distance, of tributary streams and wetlands. Livestock grazing associated ~~at the effective date of this chapter~~ with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan that has been filed with the Planning Bureau. an approved soil and water conservation plan.

B. Archeological 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, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days before action is taken by the permitting authority. The permitting authority shall consider comments received from the Commission before rendering a decision on the application.

C. Clearing or Removal of ~~+~~Vegetation for Activities other than Timber Harvesting development.

(1) In a Resource Protection District Within a shoreland area zoned for resource protection abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees as described in section Q. safety hazards.

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

(3) Except in areas as described in Subsection C(1), above, ~~and except to allow for the development of permitted uses,~~ within a strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and or within a strip extending 75 feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

(a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six (6) 10 feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline is permitted, provided that a cleared line of sight to the water through the buffer strip is not created. ~~Adjacent to a great pond classified GPA, or stream or river flowing to a great pond classified GPA, the width of the footpath shall be limited to six feet. Note: The footpath permitted in accordance with this section is not intended to be included in the two-hundred-fifty-square-foot limitation of cleared openings.~~

- (b) Selective cutting of trees within the buffer strip is ~~allowed~~permitted, provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of ~~§ 300-528B(3)(b)~~this section, a "well-distributed stand of trees" ~~and other vegetation~~ adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of ~~24~~12 or more in ~~each 25-foot by 50-foot rectangular (1250 square feet)~~ any twenty-five foot by twenty-five 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 to <u>≤ 4 in.</u>	1
4 to <u>≤ 8 in.</u> <del>12</del>	2
<u>8 to &lt; 12 in.</u>	<u>8</u>
12 <u>in. or greater</u> <del>plus</del>	<u>4</u> <del>12</del>

~~[1]—Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees and other vegetation" is defined as maintaining a minimum rating score of eight per twenty-five foot square area.~~

~~Note: As an example, adjacent to a great pond, if a twenty-five foot by twenty-five foot plot contains three trees between two and four inches in diameter, three trees between four and 12 inches in diameter, and three trees over 12 inches in diameter, the rating score is:~~

$$~~(3 \times 1) + (3 \times 2) + (3 \times 4) = 21 \text{ points}~~$$

~~Thus, the twenty-five foot by twenty-five foot plot contains trees worth 21 points. Trees totaling nine points (21 - 12 = 9) may be removed from the plot, provided that no cleared openings are created.~~

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.

---

**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 § 300-528C(3)(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 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

---

**NOTE:** A municipality may elect to retain their present “point system” that is based on 25-foot by 25-foot plots. If so, the paragraph above must be modified as follows:

For the purposes of § 300-528C(3)(b), “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least three (3) saplings less than two (2) inches in diameter at four and one-half (4 ½) feet above ground level for each 25-foot by 25-foot rectangular area. If three (3) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 3 saplings have been recruited into the plot.

Section 300-528C(3)(b) must also be modified to make it clear that the point system establishes only a “well-distributed stand of trees” not a well-distributed stand of trees and other vegetation. “Other vegetation” is described elsewhere.

---

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

(c) In order to protect water quality and wildlife ~~habitat adjacent to great ponds classified GPA, and streams and rivers which flow to great ponds classified GPA,~~ existing vegetation under three (3) feet in height and other ground cover shall not be ~~cut, covered, or~~ removed, except to provide for a footpath or other permitted uses as described in Subsections C(3) and C(3)(a) above.

(d) Pruning of tree branches on the bottom 1/3 of the tree is ~~permitted.~~ allowed.

(e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, ~~dead or hazard diseased, unsafe, or dead~~ trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with section Q, below, unless existing new tree growth is present.

~~(e)~~(f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of the Subsection C(3) above.

~~(f)~~(g) Notwithstanding other provisions of this subsection, in the Historic Waterfront District, in order to protect water quality and wildlife habitat, and to maintain historical integrity, ground cover will be required but will not extend over three feet in height, except along the immediate water's edge. Taller vegetation may be left in place but will be left to the Tree Warden's discretion. To provide bank stabilization, a limited number of trees and tree species shall remain along the lower 25 feet of the river bank as determined by the Tree Warden. Nonnative invasive species will be permitted to be removed, so long as vegetation is replanted in these areas and soil disturbance remediation is in place until vegetation is established. Any vegetative cover needs prior approval in writing from the City Tree Warden.

The provisions contained in Subsection C(2) above shall not apply to those portions of public recreational facilities adjacent to public swimming areas. Cleared areas, however, shall be limited to the minimum area necessary.

~~(g)~~(h) Notwithstanding other provisions of this subsection, in the Kennebec Arsenal Historic Waterfront District, in order to protect water quality and wildlife habitat, and to maintain historical integrity, maintainer grass cover will be required. Trees and shrubs will be permitted to be removed, so long as vegetation is replanted in these areas and soil disturbance remediation is in place until vegetation is established.

(4) At distances greater than 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance,

from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, ~~except to allow for the development of permitted uses,~~ there shall be ~~allowed permitted~~ on any lot, in any ten-~~(10)~~ year period, selective cutting of not more than 40% of the volume of trees four ~~(4)~~ inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. In no event shall cleared openings ~~for any purpose, be development,~~ including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, including land previously ~~cleared developed.~~ This provision applies to the portion of a lot within the shoreland zone, including the buffer area, but shall not apply to the General Development District.

- (5) Legally existing nonconforming cleared openings ~~Cleared openings legally in existence on the effective date of this chapter~~ may be maintained, but shall not be enlarged, except as allowed by this ordinance permitted by this chapter.
- (6) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this subsection.

D. Commercial and industrial uses. The following new commercial and industrial uses are prohibited within the ~~S~~shoreland ~~Z~~zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:

- (1) Auto washing facilities.
- (2) Auto or other vehicle service and/or repair operations, including body shops.
- (3) Chemical and bacteriological laboratories.
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms.
- (5) Commercial painting, wood preserving, and furniture stripping.
- (6) Dry-cleaning establishments.
- (7) Electronic circuit assembly.
- (8) Laundromats, unless connected to a sanitary sewer.
- (9) Metal plating, finishing, or polishing.
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas.
- (11) Photographic processing.

(12) Printing.

E. Erosion and sedimentation control. See § **300-514B** and the Technical Standards Handbook.

E.F. Essential services.

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

(2) The installation of essential services, other than road-side distribution lines, is not ~~allowed permitted~~ 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 permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

~~(2)~~(3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

F.G. Flood protection. Where applicable, all structures and uses in shoreland areas shall comply with the provisions of § **300-508**.

G.H. Mineral exploration. See Chapter **198**, Article **I**, Mineral Extraction.

H.I. Piers, docks, wharfs, bridges and other structures and uses extending over or below beyond the normal high-water line of a water body or within a wetland, and shoreland stabilization. In addition to federal or state permits which may be required for such structures and uses, they shall conform to the following:

(1) No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage, a second structure may be allowed and may remain as long as the lot is not further divided.

~~(1)~~(2) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion. ~~Appropriateness of soils shall be subject to the standards outlined in the Maine Erosion and Sediment Control Handbook for Construction, published by the Maine Department of Environmental Protection.~~

~~(2)~~(3) The location shall not interfere with existing developed or natural beach areas.

~~(3)~~(4) The facility shall be located so as to minimize adverse effects on fisheries.

~~(4)~~(5) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses existing conditions, use, and character of the area.

~~(5)~~(6) 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 as an operational necessity. (NOTE: A structure constructed on a float or floats is prohibited unless it is designed to function as, and is registered with the Maine Department of Inland Fisheries and Wildlife as a watercraft.)

(7) 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.

~~(6)~~(8) 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 ~~a residential dwelling unit or~~ units in any district.

(9) Except in the General Development District, 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 20 feet in height above the pier, wharf, dock or other structure.

(10) Vegetation may be removed in excess of the standards in § 300-528C of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board and the Department of Environmental Protection, pursuant to the Natural Resources Protection Act. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.

(a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.

(b) Revegetation must occur in accordance with § 300-528S.

(11) A deck over a river may be exempted from the shoreland setback requirements if it is part of a downtown revitalization project that is defined in a project plan approved by the legislative body of the municipality, and may include the revitalization of structures formerly used as mills that do not meet the structure setback requirements, if the deck meets the following requirements:

(a) The total deck area attached to the structure does not exceed 700 square feet;

(b) The deck is cantilevered over a segment of a river that is located within the boundaries of the downtown revitalization project;

- (c) The deck is attached to or accessory to an allowed commercial use in a structure that was constructed prior to 1971 and is located within the downtown revitalization project;
- (d) The construction of the deck complies with all other applicable standards, except the shoreline setback requirements in § 300-528Q; and
- (e) The construction of the deck complies with all other state and federal laws.

**NOTE:** New permanent 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*, 38 M.R.S.A. § 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

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

- (1) See Driveway and Access Standards, § 5.3, City of Augusta Technical Standards Handbook.
- (2) See City of Augusta Technical Standards Handbook, Road Standards.
- (3) The maximum driveway length in the Shoreland District is 500 feet.
- (4) Roads and driveways shall be set back at least 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless, but if 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 shall be to no less than 50 feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.
  - (a) On slopes of greater than 20%, the road and/or driveway setback shall be increased by 10 feet, horizontal distance, for each 5% increase in slope above 20%.
  - (b) This subsection does not shall apply neither to approaches to water crossings or nor to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this Subsection except for that portion of the road or driveway necessary for direct access to the structure.

- (5) Existing public roads may be expanded within the legal road right-of-way regardless of ~~their~~ its setback from a water body, tributary stream or wetland.
- (6) New permanent roads are not ~~allowed~~ permitted within the ~~S~~Sshoreland ~~Z~~Zone along significant river segments, except:
  - (a) To provide access to structures or facilities within the zone; or
  - (b) The applicant demonstrates that no reasonable alternative route exists outside the ~~S~~Sshoreland ~~Z~~Zone. When roads must be located within the ~~S~~Sshoreland ~~Z~~Zone, they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (7) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. ~~A road or driveway may also be, or as~~ approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District, in which case the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- (8) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in § **300-514B(1)**, General drainage and erosion control standards, of this chapter.
- (9) Road and driveway grades shall be no greater than 10%, except for shore segments of less than 200 feet.
- (10) 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 ~~into~~ 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 normal high-water line of a water body, tributary stream, or upland edge of a wetland. ~~Road surface~~ 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.
- (11) 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 ditches~~ gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply:
  - (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway, at intervals no greater than indicated in the following table:

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

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

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

J.K. Septic waste disposal.

(1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules ~~(rules)~~, and the following:

~~(2) NOTE: The rules, among other requirements, include:~~

(a) Clearing or removal of woody vegetation necessary to site a new system and associated fill extensions, shall not extend closer than 75 feet, horizontal distance, from the normal high water line of a water body or the upland edge of a wetland.

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

~~(a)~~(c) The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed minimum setback for new subsurface sewage disposal systems shall be no less than 100 horizontal feet 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.

~~(b)~~(d) Replacement systems shall meet the standards for replacement systems as contained in the rules. (Not in MDEP ordinance, but should keep?)

~~K.L.~~ Signs. See the sign standards in § 300-516.

~~L.M.~~ 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 or improper drainage 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, based on an on-site investigation, and be prepared by state certified professionals. Certified persons may include Maine certified soil scientists, Maine registered professional engineers, Maine state certified geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum groundwater 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.

~~M.N.~~ Stormwater. See § 300-514.

O. Timber harvesting. The Bureau of Forestry shall administer the regulation of all forestry activities within the City of Augusta. Title 38 M.R.S.A. section 438-A provides that, notwithstanding other provisions of the Mandatory Shoreland Zoning Act, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with section 438-B and rules adopted by the Maine Forest Bureau pursuant to Title 12, section 8867-B. Timber harvesting regulation repealed December 19, 2016.

~~N.P.~~ Water quality protection. No activity shall deposit on or into the ground or discharge to the waters of the state any pollutant that, by itself or in conjunction with other activities or substances, will impair designated uses or the water classification of the water body, tributary or wetland.

~~O.Q.~~ Minimum dimensional requirements in shoreland areas. All land use activities within the Shoreland Zone shall conform with the following applicable provisions, with the exception of allowable land use activities utilizing existing structures and/or activities that utilize public sewer, in the GD District adjacent to the Kennebec River. For these above-stated exceptions, the dimensional requirements of the underlying zoning district shall apply. Provisions:

(1) Minimum lot standards.

	Minimum Lot Area (square feet)	Minimum Shore Frontage (feet)
Residential, per dwelling unit:		
(a) Within the Shoreland Zone adjacent to tidal areas	30,000	150
(b) Within the Shoreland Zone Adjacent to nontidal areas	40,000	200
Governmental, institutional, commercial		

	Minimum Lot Area (square feet)	Minimum Shore Frontage (feet)
or industrial, per principal structure:		
(a) Within the Shoreland Zone adjacent to tidal areas	40,000	200
(b) Within the Shoreland Zone adjacent to nontidal areas	60,000	300
Public and private recreational facilities:		
(a) Within the Shoreland Zone adjacent to tidal and nontidal areas	40,000	200
(2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two <u>(2)</u> lots shall not be included toward calculating minimum lot area.		
(3) 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.		
(4) The minimum width of any portion of any lot within 100 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.		
(5) If more than one residential dwelling unit, <u>principal governmental, institutional, or more than one principal</u> commercial or industrial structure <u>or use, or combination thereof</u> , is constructed <u>or established</u> on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, <del>or principal structure,</del> <u>or use.</u>		

**NOTE:** Cluster housing is permitted, provided that the overall dimensional requirements, including frontage and lot area per dwelling unit, are met. When determining whether dimensional requirements are met, only land area within the ~~S~~shoreland ~~Z~~zone shall be considered.

P.R. Principal and accessory structures.

~~(4)~~—(1) All new principal and accessory structures shall be set back at least 100 feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams ~~(as defined)~~, or the upland edge of a wetland, except that, in the Stream Protection 50 (SP50) District, the setback from the normal high-water line shall be at least 50 feet, and, in the General Development District, the setback from the normal high-water line shall be at least 25 feet. In the Resource Protection District the setback requirements 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. In addition:

~~(a)~~—(a) The water body, tributary stream, or wetland setback provision shall neither apply ~~neither~~ to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other ~~functionally~~ water-dependent uses.

(b) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

~~(b)~~(a)

---

**NOTE:** The Planning Board is authorized to increase the required setback of a proposed structure, as a condition to permit approval, if necessary to accomplish the purposes of this chapter. Instances where a greater setback may be appropriate include, but are not limited to, areas of steep slope, shallow or erodible soils, or where an adequate vegetative buffer does not exist.

---

**NOTE:** A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

---

- (2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial, and Stream Protection Districts shall not exceed 35 feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
- (3) The ~~lowest first~~-floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one 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 identified as recent floodplain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.
- (4) With the exception of General Development Districts located adjacent to coastal wetlands and rivers that do not flow to great ponds, non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the

shoreland zone. This limitation does not apply to public boat launching facilities regardless of the district in which the facility is located.

In a General Development District located adjacent to coastal wetlands, or rivers that do not flow to great ponds, non-vegetated surfaces shall not exceed a total of seventy (70) percent of the portion of the lot located within the shoreland zone.

For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as nonvegetated surfaces when calculating lot coverage for lots of record on March 24, 1990 and in continuous existence since that date.

- (5) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
- (a) The site has been previously altered and an effective vegetated buffer does not exist;
  - (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - (d) The total height of the wall(s), in the aggregate, are no more than 24 inches;
  - (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
  - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and

(g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

(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 § 300-528(C)(3)(a), may traverse the buffer;

---

NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, tributary stream or coastal wetland, a permit pursuant to the *Natural Resource Protection Act* is required from the Department of Environmental Protection.

---

~~(4) The total area of all structures, parking lots and other nonvegetated surfaces within the Shoreland Zone shall not exceed 20% of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed, except in the General Development District adjacent to tidal waters and rivers which do not flow to great ponds classified GPA, where lot coverage shall not exceed 70%.~~

(5) 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 feet in width, that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C), and that the applicant demonstrates that no reasonable access alternative exists on the property.

#### Q. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

(1) Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

- (a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.
- (b) Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.
- (c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
- (d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
- (e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.
- (2) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
- (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:

- (i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
  - (ii) Stumps from the storm-damaged trees may not be removed;
  - (iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and
  - (iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.
- (b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

#### R. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15(C), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

- (1) The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(C) apply;
- (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 15(Q) are not applicable;
- (3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
- (4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(A) are complied with;
- (5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development

district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A section 343-E, and that is located along:

(a) A coastal wetland; or

(b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.

(6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:

(a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;

(b) Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and

(c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.

---

NOTE: An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation and Forestry's Natural Areas Program:  
[http://www.maine.gov/dacf/mnap/features/invasive\\_plants/invasives.htm](http://www.maine.gov/dacf/mnap/features/invasive_plants/invasives.htm)

---

(7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

#### S. Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 15(C), to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

(1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be

- removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:
- (3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
- (4) Revegetation activities must meet the following requirements for trees and saplings:
- (a) All trees and saplings removed must be replaced with native noninvasive species;
  - (b) Replacement vegetation must at a minimum consist of saplings;
  - (c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
  - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
  - (e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
  - (f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.
- (5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:
- (a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
  - (b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;

- (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
- (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years
- (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:

  - (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (b) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
  - (c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.
- (T) Campgrounds. See Section 300-520.A. Campgrounds and Campsites.
- (U) Individual Private Campsites. See Section 300-520.B. Individual Private Campsites.
- (V) Parking Areas. See Section 300-513.B(4) Parking areas in Shoreland Districts.

Part 6  
**ADMINISTRATION**

**§ 300-601 Enforcement; violations and penalties.**

**[Amended 1-19-1993 by Ord. No. 707; 3-1-1993 by Ord. No. 41; 5-16-1994 by Ord. No. 494; 3-20-1995 by Ord. No. 40]**

- A. Enforcement. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this chapter.
- (1) If the Code Enforcement Officer shall find that any provision of this chapter is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
  - (2) The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this chapter.
  - (3) Before issuing a certificate of occupancy, the Code Enforcement Officer may require the applicant to submit a performance bond running to the City or certified check payable to the City, in an amount and form acceptable to the Director of Finance, with the advice and consent of the Code Enforcement Officer and the Corporation Counsel. The performance bond or certified check must equal at least the total cost of furnishing, installing and completing all permit approval items as required by the Code Enforcement Officer at the time of issuing the certificate of occupancy. The surety shall not expire without written approval of the Director of Finance.
  - (4) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.
  - (5) On an annual basis, a summary of the records listed in Subsection A(3) of this section affecting shoreland areas shall be submitted to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.
  - (6) With respect to flood damage prevention requirements and in addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of:

- (a) The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
  - (b) A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
  - (c) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
  - (d) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
  - (e) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.<sup>[1]</sup>
- (7) Subdivisions. The Director of Code Enforcement or his designee may issue a cease work order on any subdivision or major development in which the subdivider, developer or his contractor is violating the terms of the subdivision approval. Such order may be issued only after counsel with the City Engineer. The cease work order shall apply until violations are sufficiently corrected. Work done after issuance of a cease work order shall be considered a violation of this chapter and subject to the fines of this chapter.
- (8) Actions or failure to act by the Code Enforcement Officer pursuant to Subsection A of this section are not appealable to the Board of Appeals.

B. Legal actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this chapter and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by the authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage. Actions or failure to act by the municipal officers pursuant to this section are not appealable to the Board of Appeals.

C. Penalty.

- (1) Any person, firm, or corporation, including a landowner's agent or a contractor, who orders or conducts any activity in violation of any of the provisions of this chapter or who fails to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variances or conditional uses,

shall, upon conviction thereof, be penalized in accordance with 30-A M.R.S.A. § 4452. As of the effective date of this chapter, such penalties include fines of not less than \$100 nor more than \$2,500 per violation. Each day such violation continues shall constitute a separate offense. [However, in a Resource Protection District the maximum penalty is increased to \\$5,000 \(38 M.R.S.A. section 4452\).](#)

- (2) The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, or maintains such violation, may each be found guilty of a separate offense and suffer the penalties herein provided.
  - (3) With respect to flood damage prevention regulations, the penalties contained in 30-A M.R.S.A. § 4452 shall apply to any violation of this chapter.
  - (4) With respect to the subdivision regulations, any person who conveys or offers or agrees to convey any land by reference to a subdivision plan which has not been approved as required by this chapter and recorded by the proper Register of Deeds, shall be subject to by a civil penalty of not more than \$1,000 for each lot conveyed or offered or agreed to be conveyed, except that nothing herein contained shall be deemed to bar any legal or equitable action to restrain or enjoin any act in violation of these regulations.
- D. Permit required; general. The Code Enforcement Officer shall review and approve, approve with condition or deny applications for permits in accordance with this chapter. The Code Enforcement Officer shall inform applicants as to the need for a conditional use permit by the Planning Board as outlined in § **300-603A**. In accordance with § **300-606B**, the Board of Appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer or Planning Board.
- (1) Building permit plans required.
    - (a) Where specifically permitted "by right," no building permit is needed.
    - (b) No structure and/or parking lot shall be erected, enlarged, moved or improved without a permit from the Code Enforcement Officer. No permit shall be issued except in conformity with the provisions of this chapter. An administrative fee of \$5 will be charged for each permit application, in addition to building permit fees.
    - (c) No earth filling resulting in a net increase of 25 cubic yards of material or more in any one year shall be done without a permit from the Code Enforcement Officer. A one-time administration fee of \$5 will be charged for each permit application.
    - (d) The Code Enforcement Officer may institute a permit by rule process for accessory buildings.

- (2) Special fees. The City Council shall set fees for conditional uses, appeals and variances, appeals from Planning Board decisions, rezonings, subdivisions, flood hazard development permits and major developments, which fees shall be adjusted from time to time. Said fee schedule shall be filed with the City Clerk.
- (a) Said fees will be collected at the time the applicant files, and the fees are nonrefundable.
  - (b) An additional fee may be charged if the Code Enforcement Officer, City Planner, City Engineer, Board of Appeals and/or Planning Board needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of this chapter and be grounds for the issuance of a stop-work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.
- (3) Application for permit; plans required:
- (a) Site plan required. All applications for permits shall be accompanied by a site plan of suitable scale showing:
    - [1] The actual shape, size, and location of the lot to be built upon and the names of the landowner of record as well as the names of the abutting property owners;
    - [2] A survey prepared by a Maine registered land surveyor and tied to the Maine Coordinate System (as outlined in § 3.2.6 of the City of Augusta Technical Standards Handbook) shall be required by the Code Enforcement Officer for all nonresidential uses with a proposed floor area in excess of 10,000 square feet;
    - [3] The size (specific dimensions), the shape, height, and location (with setbacks noted) of any buildings to be erected, altered, or removed from the lot;
    - [4] The location of street entrances to, exits from and driveways on the premises;
    - [5] The location, size, and site design, construction, and traffic service arrangement of existing or proposed off-street parking and loading areas;
    - [6] Abutting rights-of-way and right-of-way widths;
    - [7] Show how applicable performance standards will be met;

- [8] The proposed location, size (design, lighting, and display characteristics) of all signs;
  - [9] The location of existing and/or proposed sewage disposal facilities;
  - [10] The location of existing and/or proposed water supply facilities; and
  - [11] Any areas to be cut and filled.
- (b) The application shall include any other information is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. The issuance or refusal of a permit shall be made within 10 working days of the submission of a complete application to the Code Enforcement Officer. In shoreland areas, no 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 first been secured by the applicant from the licensed plumbing inspector, according to the requirements of this chapter and state law.
- (c) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (d) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the licensed plumbing inspector, shall be submitted whenever the nature of the proposed structure would require the installation of a subsurface sewage disposal system.
- (e) Right, title or interest. The Planning Board shall consider an application only when an applicant has demonstrated sufficient right, title or interest in all of the property which is proposed for development or use. An applicant shall demonstrate in writing sufficient right, title or interest, as follows:
- [1] When the applicant claims ownership of the property, a copy of the deed(s) to the property shall be submitted.
  - [2] When the applicant has an option, purchase-sale agreement or other contractual agreement for the acquisition of the property, a copy of such agreement(s) shall be submitted. Such agreements shall contain terms to establish future title.
  - [3] When the applicant has a lease on the property, a copy of the lease shall be submitted. The lease shall be of sufficient duration to permit construction and reasonable use of the development.
- (4) If no substantial progress of construction has been made within six months of the date of the permit, the permit shall become invalid.

**§ 300-604 Special exception uses.**  
**[Added 12-3-2001 by Ord. Nos. 141-A, 141-B, 141-C]**

**A. General.**

- (1) The Planning Board is hereby authorized to hear and decide, in accordance with Chapter **14**, Article **II**, of the Code of the City of Augusta, as amended, upon applications for special exception uses. The Planning Board shall hear and approve, approve with modifications or conditions (see Subsection **D** of this section), or disapprove all applications for special exception uses. Special exception uses are typically commercial land uses and developments that could support or enhance the purposes of a predominantly residential zoning district with adherence to reasonably high design standards.
- (2) A 2/3 majority of the minimum meeting quorum of the Planning Board shall be required to approve a special exception use permit. No special exception use permit shall be authorized unless specific provision for such special exception use is made in this chapter. A person informed by the Code Enforcement Officer that he requires a special exception use permit shall file an application for the permit with the Planning Board.

**B. Public hearing.** Following the filing of a complete application for a special exception use review, and before taking action on the application, the Planning Board shall hold a public hearing on the proposed project at its next monthly meeting, providing the application is determined to be complete by the City Planner or the Planning Board Chairman at a date not later than the application deadline for said meeting. The Planning Board shall provide notice of a public hearing on the application, in the form and manner and to the persons specified herein.

- (1) The notice shall include the time and place of such hearing, which shall be within 30 days of such application, the nature of the matter to be heard, the address or location of the property involved. Where notice by mail is required, it shall be mailed at least 10 days in advance of the hearing date by regular United States mail.
- (2) Notices shall be given to each of the following:
  - (a) To the applicant, City Council, Planning Board and Board of Zoning Appeals.
  - (b) To all residents of the City, by publication in a newspaper of general circulation in the City at least 10 days before the hearing, and by posting a sign on the portion of the property involved that is nearest the public road.
  - (c) To the owners of the properties within 500 feet of the parcel involved if the parcel is located in the Urban Growth Area Districts or within 1,000 feet of the parcel involved if the parcel is located in the Planned Development and/or Rural Districts by regular United States mail.
  - (d) For the purposes of this section, the owners of property shall be considered to be

the parties listed by the Assessor's office of the City of Augusta as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action by the Planning Board.

- (e) The applicant's case shall be heard first. The applicant shall be allowed to directly cross-examine witnesses. To maintain order by procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair.

C. Site plan review criteria applicable to special exception uses.

- (1) Design review requirements. Does project meet the design standards of § **300-605C** of this chapter?
- (2) Project design impact upon purposes of district. Does the project support/advance the purposes of the zoning district(s) that it is part of?
- (3) Special exception use criteria. Does the project meet all the criteria for conditional uses identified in § **300-603E** of this chapter?

D. Conditions attached to special exception uses. Upon consideration of the criteria listed above, the Planning Board may attach such conditions, in addition to those required elsewhere in this chapter, that it finds necessary to further the purposes of this chapter. Violation of any of these conditions shall be a violation of this chapter. Such conditions may include, but are not limited to, specifications for type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational controls (including noise and odor control); professional inspection and maintenance; sureties; deed restrictions; restrictive covenants; locations of facilities; type of construction; or any other conditions necessary to fulfill the purposes of this chapter.

E. Special exception use decision.

- (1) A finding by a minimum of 2/3 majority of the minimum meeting quorum of the Planning Board that the project satisfactorily meets all the applicable review criteria identified in Subsection C above shall be required to approve the application. All decisions of the Planning Board shall be accompanied by a written statement that sets forth the precise reasons why the findings were made. Once a decision is made, the Planning Board shall inform, in writing, the applicant and the Code Enforcement Officer of its decision and its reasons therefor. 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 special exception use permit.
- (2) Within 30 days of the public hearing, the Planning Board shall approve, deny, or approve with conditions all applications for a special exception use permit if it makes a positive finding based on each of the following applicable criteria. The applicant

shall have the burden of proving that his/her application is in compliance with the requirements of this chapter.

- F. Effective date of approval. All projects approved by the Planning Board in accordance with this section shall be commenced within two years of the date of the Planning Board decision and shall be substantially completed within five years of the date of the Planning Board decision unless a permit extension has been granted by the Board.

**§ 300-606 Appeals.**

- A. Establishment of Board of Appeals. There is hereby established a Board to be known as the "Board of Zoning Appeals," which Board's duties shall include, but not be limited to, hearing appeals under this chapter.

- (1) Compliance with state law. The Board of Zoning Appeals shall comply with the provisions of 30-A M.R.S.A. § 2691 and 30-A M.R.S.A. § 4353, as amended.
- (2) Membership. The Board of Zoning Appeals shall consist of seven members and two associate members, all of whom shall be residents of the City of Augusta. Neither a municipal officer nor a spouse of a municipal officer may be a member or associate member of the Board. All members shall serve without pay.
- (3) Municipal officers to appoint members. All members of the Board of Zoning Appeals, including associate members, shall be appointed by the Mayor and confirmed by the City Council.
- (4) Members' terms. The initial appointed members shall hold office, two for one year, two for two years and three for three years. Thereafter, the appointments shall be for a term of three years. Associate members shall be appointed for three-year terms. The municipal officers may dismiss a member of the Board for cause before the member's term expires.
- (5) Vacancies. When a member of the Board of Zoning Appeals is unable to act because of conflict of interest, physical incapacity, absence, or any other reason satisfactory to the Chairman, one or both associate members are hereby empowered to act in place of the regular member or members who are unable to act. When there is a permanent vacancy, the senior associate member shall automatically assume the position created by the vacancy and shall serve for the unexpired term of said position without the necessity of being specifically appointed or sworn to said position. The Mayor shall thereafter appoint a new associate member for a three-year term. The appointment shall be confirmed by the City Council.
- (6) Quorum and voting requirements.
  - (a) The presence of four or more Board of Zoning Appeals members shall constitute a quorum, and associate members in attendance may be included in determining the existence of a quorum. When a member of the Board is unable to act because of a conflict of interest, physical incapacity, absence or any other

reason satisfactory to the Chair, one or both associate members shall be empowered by the Chair to act in place of the regular member or members who are unable to act. Only members and associates authorized to vote are permitted to make and second motions. No meeting of the Board of Zoning Appeals shall be held without a quorum as established in this section. The Board of Zoning Appeals shall act by majority vote, calculated as follows:

Authorized Voters	Majority (votes needed to pass motion)
4	3
5	3
6	4
7	4

(b) A Board member may abstain from voting. If a member wishes to abstain, he or she shall so declare prior to discussion on the matter. An exception can be made by the Chair if it is determined during deliberations that a member has a conflict of interest. If and when this occurs, the member must then abstain. Once a member has abstained, he or she shall not be counted as an authorized voter.

- (7) Meetings; officers. The Board of Zoning Appeals shall have regular monthly meetings and have such other special meetings as shall be called by the Chairperson or by a written petition by four or more members of the Board. The Board shall have a Chairperson and Secretary and such other officers as it may determine by vote.
- (8) Regulations, bylaws. The Board shall have the power to adopt all necessary regulations and bylaws to regulate its own activities. Such regulations and bylaws shall be filed with the City Clerk.

B. Powers and duties of the Board of Appeals. The Board of Appeals shall have the following powers and duties: **[Amended 1-21-1992 by Ord. No. 303; 3-1-1993 by Ord. No. 41; 12-19-1994 by Ord. No. 685; 3-20-1995 by Ord. No. 40; 6-4-2007 by Ord. No. 109; 6-16-2011 by Ord. No. 11-71]**

(1) Administrative appeals. To hear and decide appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement administration of this chapter; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement or decision or determination made by, or failure to act by, the Code Enforcement officer in his or her review of and action on a permit application under this chapter. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this chapter is not appealable to the Board of Appeals. or to effect any variation in the application of this chapter from its stated terms. Actions or failure to act by the Code Enforcement Officer or the municipal officers in the enforcement of this chapter pursuant to § **300-601A** shall not be appealable to the Board of Appeals. The Board

may modify or reverse any ruling or decision of the Planning Board or Code Enforcement Officer if the Board finds that such ruling or decision is contrary to the specific provisions of this chapter. The Board is authorized to hear and decide appeals where it is alleged that due process, as outlined in this chapter and, in the case of appeals of Planning Board decisions, as outlined in Chapter 14, Article II, of the Code of the City of Augusta, has been violated. In regard to allegations that specific findings of fact are in error, the Board of Appeals is empowered to modify or reverse a Planning Board finding only if such finding is found to be clearly erroneous.

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

(4)

- (2) Variances; conditions governing applications; procedures. To hear and decide upon appeal in specific cases in variance from the strict requirements of this chapter where, owing to special conditions or circumstances affecting a particular parcel of land or building or structure thereon which are not applicable to other lands, buildings, or structures in the same district, as in the case of exceptionally irregular, narrow, or steep lots or other physical conditions, a literal enforcement of the terms of this chapter would result in undue hardship. As used in this chapter, a variance is authorized only for dimensional requirements, including but not limited to lot width, structure height, percent lot coverage, setbacks, sign size, buffer yard width. A variance may not be granted to permit a use that is not provided for as a permitted use or a conditional use. The Board of Appeals shall not grant a variance from the terms of this chapter in respect to such land or structures unless and until:

- (a) A written application for a variance is filed with the Board demonstrating:
  - [1] That well-documented, exceptional conditions affect the particular land or building which do not generally affect other property in the district.
  - [2] That such conditions do in fact constitute an undue hardship to the owner of such land or building. The term "undue hardship" shall 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 a variance will not alter the essential character of the locality; and
  - [d] That the hardship is not the result of action taken by the applicant or prior owner.
- [3] That a variance from the particular terms of this chapter can be granted without detriment to the public interest or the health, safety, or general welfare of the residents of the municipality, and without impairment of the integrity of the Comprehensive Plan for municipal development, or of the purpose and intent of this chapter.

(b) Notwithstanding § 300-606B(2)(a)(2) above, the Board of Appeals, or the codes enforcement officer if authorized in accordance with 30-A MRSA §4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to § 300-606B(2)(d) and § 300-606H(4).

~~(b)~~(c) Limit on variances. No variance shall be granted for placement of a structure less than five feet from the property line unless the abutting owner gives a construction, maintenance and repair easement which shall be recorded with the Kennebec County Registry of Deeds. No variance shall be granted which does not provide for a snow storage area of a minimum of five feet from the right-of-way line. In shoreland areas, the minimum setback from the normal high-water mark for subsurface sewage disposal facilities shall not be reduced by variance. In shoreland areas, the Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposed and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

~~(e)~~(d) A copy of each variance request in shoreland areas, 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 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals. All ~~all~~ variances granted by the Board of Appeals in shoreland areas shall be sent by the Code Enforcement Officer to the Department of Environmental Protection within 14 days of the decision.

C. Appeals and variances.

- (1) The Board of Appeals of the City of Augusta may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this chapter.
- (2) The Board of Appeals may grant a variance from the requirements of this chapter consistent with state law and the following criteria:
  - (a) Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
  - (b) Variances shall be granted only upon:
    - [1] A showing of good and sufficient cause; and
    - [2] A determination that, should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and
    - [3] A showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and
    - [4] A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:
      - [a] That the land in question cannot yield a reasonable return unless a variance is granted; and
      - [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; and
      - [c] That the granting of a variance will not alter the essential character of the locality; and

- [d] That the hardship is not the result of action taken by the applicant or a prior owner.
- (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- (d) Variances may be issued for new floodplain construction, substantial improvements, or other development for the conduct of a functionally dependent use, provided that:
  - [1] Other criteria of this Subsection C and § 300-508E(11) are met; and
  - [2] The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (e) Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of historic structures upon the determination that:
  - [1] The development meets the criteria of Subsection C(2)(a) through (d) above; and
  - [2] The proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (f) Any applicant who meets the criteria of Subsection C(2)(a) through (e) shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
  - [1] The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
  - [2] Such construction below the base flood level increases risks to life and property; and
  - [3] The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

(g) Appeal procedure for administrative and variance appeals.

- [1] An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the planning Board, except for enforcement-related matters as described in § 300-606B(1) above. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the 30 day requirement. after receipt of a written decision of the Code Enforcement Officer or Planning Board.
- [2] Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- [3] The Board of Appeals shall hold a public hearing on the appeal within 35 days of its receipt of an appeal request.
- [4] The person filing the appeal shall have the burden of proof.
- [5] The Board of Appeals shall decide all appeals within 35 days after the close of the hearing and shall issue a written decision on all appeals.
- [6] The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a flood hazard development permit, which includes any conditions to be attached to said permit.
- [7] Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with state laws within 45 days from the date of any decision of the Board of Appeals.

D. Burden of proof. In any proceeding before the Board of Appeals, the burden of proof shall be upon the applicant to establish the application/use is in compliance with the requirements of this chapter.

E. Board of Appeals may impose conditions. In granting appeals, the Board may impose such conditions and safeguards regarding the location, character, fencing, screening, landscaping, or other features as it may deem advisable in furtherance of the intent and purpose of this chapter and may require posting of bonds to assure performance. The issuance of any variance shall be contingent upon the applicant's agreeing in writing to indemnify and save harmless the City against all loss, cost, damage or expense occurring by reason of the erection or maintenance of a structure and upon his or her filing with the City Clerk a certificate of public liability insurance covering property damage up to \$1,000 and bodily damage with a coverage of \$10,000 to \$20,000 minimum limits.

F. Filing of appeals. [Amended 6-4-2007 by Ord. No. 109]

- (1) In all cases, a person aggrieved by any decision of the Code Enforcement Officer or Planning Board shall commence his or her appeal within 30 calendar days after the date the official written decision is signed by the Code Enforcement Officer or Planning Board Chair. If the 30th day falls on a nonbusiness day for the City, the final date for filing an appeal shall be the end of the next business day for the City.
- (2) Applications for appeals shall be made ~~Such appeal shall be commenced~~ by filing with the Board of Appeals a written notice of appeal, which includes:
  - (a) A concise written statement indicating what relief is ~~required~~/requested and why the appeal or variance ~~it~~ should be granted.
  - (b) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (3) Upon receiving an application for an administrative appeal or variance, being notified of an appeal from a decision of a Code Enforcement Officer, the Code Enforcement Officer or Planning Board, as appropriate shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from. Upon being notified of an appeal from a decision of the Planning Board, City planning staff shall have prepared and transmitted to the Board of Appeals a written certified transcript of the Planning Board proceedings from which an appeal is being taken.

G. Public hearing. Before making any decisions or taking action on any appeal, the Board of Appeals shall hold a public hearing on any administrative appeal or a request for a variance; within 35 days of its receipt of a complete written application, unless this time period is extended by the parties. ~~an appeal request, hold a public hearing.~~ The Board shall notify the appellant, the Code Enforcement Officer, the Planning Board, the municipal officers, the Kennebec Journal and owners of abutting property at least 10 days in advance of the hearing specifying the nature of the appeal and the time and place of the hearing.

- (1) Whenever an appeal is filed of a decision made by the Planning Board where abutters were notified, all abutters initially notified shall be notified of the upcoming appeal.
- (2) In the case of appeals from decisions made by the Planning Board, the public hearing shall be limited to the certified transcript and record of the Planning Board proceedings; no new information shall be considered.
- (3) The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked only through the Chair. All persons at the hearing shall abide by the order of the Chair.

H. Appeal decision.

- (1) Within ~~35~~ 30 days of the public hearing, the Board of Appeals shall reach a decision and shall inform, in writing, the appellant, ~~and~~ the Code Enforcement Officer, and if

within the shoreland zone, the Department of Environmental Protection within 7 days of the Board's ~~of its~~ decision and its reasons therefor. Upon notification of the decision of the Board of Appeals, the Code Enforcement Officer, as instructed, shall immediately issue, issue with conditions prescribed by the Board of Appeals, or deny a permit.

- (2) 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 therefor, and the appropriate order, relief or denial thereof.
- (3) All variances granted by the Board of Appeals but not recorded at the Registry of Deeds by the applicant within 90 days of granting shall be void.

I. Appeal to Superior Court. Appeals from the Board of Appeals. Any Except as provided for by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with state laws within ~~45-30~~ days from the date of any decision of the Board of Appeals.

J. ~~Reconsideration.~~ In accordance with 30-A M.R.S.A. section 2691(3)(F), the ~~The~~ Board of Appeals may reconsider any ~~of its~~ decisions within ~~45-30~~ days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.