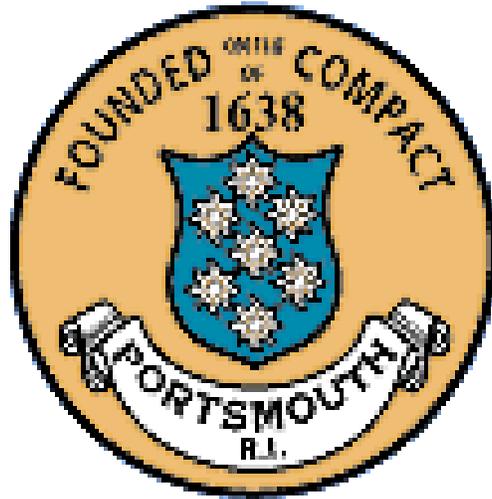


ZONING ORDINANCE

Town of



Portsmouth, Rhode Island

adopted July 1, 1994
amended 2004
amendments through February 13, 2012

TOWN OF PORTSMOUTH, RI
ZONING ORDINANCE - TABLE OF CONTENTS

This version of the Zoning Ordinance has been updated to include all amendments through February 13, 2012. In doing so, some numbering of sections has changed. All footnotes are placed at the end of each Article and in most cases footnotes are merely the date of the amendment. BUT in some cases the footnotes contain important information.

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ARTICLE I. GENERAL PURPOSES

Section A. GENERAL APPLICATION OF THIS ORDINANCE

No building shall be erected or used, and no land shall be used, or lot created or divided unless in conformity with the regulations of this Ordinance or other Ordinances of the Town of Portsmouth. All other buildings, and all other uses of land or of buildings, are hereby expressly prohibited, except those already lawfully existing which by the provisions of this Ordinance, become lawfully non-conforming.

Section B. PURPOSES

This ordinance is designed to address the following purposes. The Town of Portsmouth recognizes these purposes, each with equal priority and numbered for reference purposes only:

1. Promote the public health, safety, and general welfare.
2. Provide for a range of uses and intensities of use appropriate to the character of the town, reflecting current and expected future needs, with reasonable consideration of the character of the districts and their peculiar suitability for particular uses.
3. Provide for orderly growth and development which recognizes:
 - a) The goals and patterns of land use contained in the comprehensive plan of Portsmouth;
 - b) The natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution;
 - c) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and freshwater and coastal wetlands;
 - d) The values of unique or valuable natural resources and features;
 - e) The availability and capacity of existing and planned public and/or private services and facilities, as well as the Town's ability to provide them;
 - f) The need to shape and balance urban and rural development, to prevent overcrowding of land; to avoid undue concentration of population; and
 - g) The conservation of the value of buildings.
4. Provide for the control, protection, and/or abatement of air, water, groundwater, and noise pollution, and soil erosion and sedimentation;
5. Provide for the protection of the natural, historic, cultural, and scenic character of Portsmouth and areas herein;
6. Provide for the preservation and promotion of agricultural production, forest, silviculture, aquaculture, timber resources, and open space;
7. Provide for and protect the public investment in transportation, water, stormwater management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, roads, recreation, public facilities, open space, and other public requirements;

8. Promote a balance of housing choices, for all income levels and groups, to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing;
9. Provide opportunities for the establishment of low and moderate income housing;
10. Promote safety from fire, flood, and other natural or man-made disasters;
11. Promote a high level of quality in design in the development of private and public facilities;
12. Promote implementation of the comprehensive plan of Portsmouth adopted pursuant to Chapter 45-22.2 of the Rhode Island General Laws;
13. Provide for coordination of land uses with contiguous municipalities, other municipalities, the state, and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on that municipality;
14. Provide for efficient review of development proposals, to clarify and expedite the zoning approval process;
15. Provide for procedures for the administration of the zoning ordinance, including, but not limited to, variances, special-use permits, and, where adopted, procedures for modifications;
16. Provide for coordination, as necessary, with contiguous communities and the State.

Section C. CONSISTENCY WITH THE COMPREHENSIVE PLAN.

This ordinance shall be interpreted and administered in a manner consistent with Comprehensive Community Plan, dated 1992 as amended. In the instance of uncertainty in the construction or application of any section of this ordinance, the ordinance shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable elements of said Comprehensive Plan.

Section D. EXISTING BUILDINGS AND LAND USE

Nothing contained in this Ordinance shall prevent or be construed to prevent the continuance of the use of any building or improvement for any purpose to which such building or improvement or land is lawfully devoted at the time of enactment of this Ordinance.

ARTICLE II. DEFINITIONS

Section A. GENERALLY

Words or terms used in this ordinance shall have the meanings stated in this section, unless explicitly noted otherwise within any other section.

Words used in the present tense include the future, the singular includes the plural and the plural the singular. The word "used" includes "designed, intended, or arranged to be used." The word "shall" is mandatory; the word "may" is permissive; the word "building" includes the word "structure"; the word "lot" includes the word "plot"; the word "land" includes the words "marsh" and "water."

Section B. DEFINITIONS OF TERMS

The following terms for the purposes of this ordinance are defined below:

ABUTTER.

One whose property abuts, that is, adjoins at a border, boundary, or point with no intervening land. For the purpose of notification, an abutter shall include one whose property is directly across the street.

ACCESSORY FAMILY DWELLING UNIT.

An accessory dwelling unit for the sole use of one or more members of the family of the occupant or occupants of the principal residence, but not needing to have a separate means of ingress and egress.

ACCESSORY USE.

A use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building. An accessory use shall not be permitted without the principal use to which it is related.

In no case shall such accessory use dominate, in area, extent or purpose, the principal lawful use or building; and except in the case of signs permitted by this ordinance, it shall not be located between the principal building and the street right-of-way.

AFFORDABLE HOUSING PLAN

A component of a housing element, as defined in § 45-22.2-4(33) of the Rhode Island General Laws, to meet housing needs in a city or town that is prepared in accordance with guidelines adopted by the State Planning Council, and/or to meet the provisions of § 45-53-4(b)(1) and (c) of the Rhode Island General Laws. ⁱ

AGGRIEVED PARTY.

An aggrieved party, for purposes of this ordinance, shall be:

- a. Any person or persons or entity or entities who can demonstrate that their property will be injured by a decision of any officer or agency responsible for administering the zoning ordinance of Portsmouth; or
- b. Anyone requiring notice pursuant to this ordinance.

AGRICULTURE.

The use of land for agricultural purposes, including farming, dairying, pasturages, apiculture, horticulture, floriculture, turf farming and animal and poultry husbandry. Also the necessary accessory uses for packing, treating, or storing the produce, provided that the operation of any such accessory use shall be secondary to that of the normal agricultural activities on that land or premises.

ALTERATION.

An alteration includes an addition, projection into yards, or change from one type of use to another. (See also Substantial Improvement.)

APPLICANT.

An owner or authorized agent of the owner submitting an application or appealing an action of any official, board or agency.

APPLICATION.

The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by an approving authority for development review, approval, or permitting purposes. (See also Vested Rights below and in Article XV.)

APPROPRIATE.

Suitable or compatible, in the context of the site and the surrounding area and uses.

APPROVED AFFORDABLE HOUSING PLAN

An affordable housing plan that has been approved by the state Director of Administration as meeting the guidelines for the local comprehensive plan as promulgated by the State Planning Council; provided, however, that state review and approval, for plans submitted by December 31, 2004, shall not be contingent on the city or town having completed, adopted, or amended its comprehensive plan as provided for in § 45-22.2-8, §45-22.2-9, or §45-22.2-12 of the Rhode Island General Laws. ⁱⁱ

AQUACULTURE.ⁱⁱⁱ

Cultivation, propagation and harvesting of fish, shellfish and vegetation products grown in water, including installing cribs, racks and other in-water structures for cultivating these products, but does not include filling, dredging, or post mining

AUTOMOBILE REPAIR ESTABLISHMENT.

Any premises used for the major repair of automobiles in which electric or gas welding or cleaning by explosive spray and/or other activities of a potentially hazardous nature, including but not limited to 1) spray painting; 2) body, fender, clutch, transmission, differential axle, spring and frame repairs; 3) major overhauling of engines requiring removal therefrom of cylinder head or of crankcase pan; 4) repairs of radiator requiring removal thereof; 5) complete recapping or retreading of tires.

AUTOMOBILE SERVICE STATION.

Any premises used for automobile fuels and oil, tires, accessories and/or services for automobiles at retail direct to the motorist consumer, including the making of minor repairs.

BUFFER.

Land which is maintained in either a natural or a landscaped state, and is used to screen and/or mitigate the impacts of development on surrounding areas, properties or rights-of-way.

BUILD.

The word "build" shall include the words "erect", "construct", "alter", "enlarge", "move", "modify" and any others of like significance.

BUILDING.

Any structure used or intended for supporting or sheltering any use or occupancy. The word "building" shall include the word "structure" unless the context unequivocally indicates otherwise. "Building" shall mean any three-dimensional enclosure by any building materials of any space for use or occupancy, temporary or permanent.

BUILDING HEIGHT.

The vertical distance from the average natural grade of the ground adjoining said building to the top of the highest point of the roof or structure. The distance shall exclude spires, chimneys, flag poles, and the like.

CALIPER. ^{iv}The trunk diameter measurement of nursery stock trees measured at 6 inches above the ground for trees up to and including 4 inches caliper size, and measured at 12 inches above the ground for trees larger than 4 inches caliper size. A tree may be deemed "destroyed" when any part of a tree is damaged to the point where that tree's survival beyond 3 full growing seasons is unlikely, as determined by a certified Arborist.

CAPACITY or LAND CAPACITY.

The suitability of the land, as defined by geology, soil conditions, topography, and water resources, to support its development for uses such as residential, commercial, industrial, open space, or recreation. Land capacity may be modified by provision of facilities and services.

CLINIC

A building used for out-patient care and treatment of ill, infirm or injured persons, but which does not provide board, room or regular hospital care and services.

CLUSTER.

A site planning technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally, historically, culturally, or other sensitive features and/or structures. The techniques used to concentrate buildings may include, per the requirements of this ordinance, but are not limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one or more uses. Under cluster

development there is no increase in the number of lots that would be permitted under conventional development.

COASTAL FEATURES.

"Coastal features" as defined in Chapter 23 of Title 46 of the Rhode Island General Laws, as determined by the RI Coastal Resources Management Council.

COMMERCIAL DISTRICT.

Retail business and consumer services.

COMMUNITY RESIDENCE.

A home or residential facility where children and/or adults reside in a family setting and may or may not receive supervised care. This shall not include halfway houses or substance abuse treatment facilities. This shall include, but not be limited to the following:

- a. Whenever six (6) or fewer retarded children or adults reside in any type of residence in the community, as licensed by the State pursuant to Chapter 24 of Title 40.1. All requirements pertaining to local zoning are waived for these community residences;
- b. A group home providing care or supervision, or both, to not more than eight (8) mentally disabled or mentally handicapped or physically handicapped persons, and licensed by the state pursuant to Chapter 24 of Title 40.1;
- c. A residence for children providing care or supervision, or both, to not more than eight (8) children including those of the care giver and licensed by the state pursuant to Chapter 72.1 of Title 42;
- d. A community transitional residence providing care or assistance, or both, to no more than six (6) unrelated persons or no more than three (3) families, not to exceed a total of eight (8) persons, requiring temporary financial assistance, and/or to persons who are victims of crimes, abuse, or neglect, and who are expected to reside in that residence not less than sixty (60) days nor more than two (2) years. Residents will have access to and use of all common areas, including eating areas and living rooms, and will receive appropriate social services for the purpose of fostering independence, self-sufficiency, and eventual transition to a permanent living situation.

COMPATIBILITY.

The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. Elements affecting compatibility include, but are not limited to, intensity of occupancy as measured by dwelling units per acre, lot coverage, pedestrian or vehicular traffic generated, volume of goods handled, and such environmental effects as noise, vibration, glare, air pollution, or radiation.

COMPLETED APPLICATION means the completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by all local boards or officials who would otherwise act with respect to an application. ^v

COMPREHENSIVE PLAN.

The comprehensive plan adopted and approved pursuant to the Rhode Island Comprehensive Plan Act of 1990 and to which any zoning adopted shall be in compliance.

CONDOMINIUM.

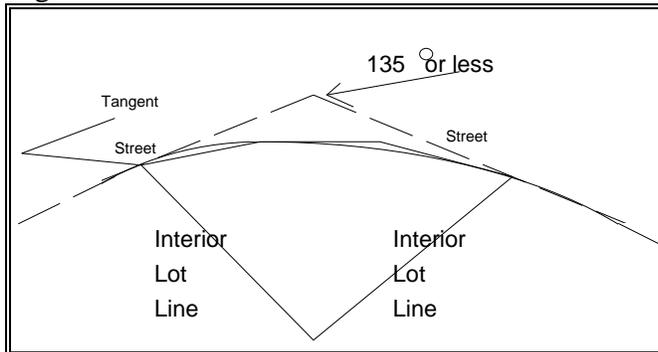
A building of multiple units - each unit owned individually.

CONSISTENT WITH LOCAL NEEDS

Reasonable in view of the State need for low and moderate income housing, and considering (i) the number of low income persons in the Town; (ii) the need to protect the health and safety of the occupants of the proposed housing or of the residents of the Town; (iii) the need to promote better site and building design in relation to the surroundings or to preserve open spaces, and (iv) if the local zoning or land use ordinances, requirements, and regulations are applied as equally as possible to both subsidized and unsubsidized housing. ^{vi}

CORNER LOT

A lot located at the intersection of two or more streets having an angle of not more than 135 degrees.



CUSTOMARY HOME OCCUPATION (See HOME OCCUPATION).

DAY CARE - DAY CARE CENTER.

Any other day care center which is not a family day care home, including Day nursery, nursery school, kindergarten or other agency giving day care to children.

DAY CARE - FAMILY DAY CARE HOME.

Any home other than the individual's home in which day care in lieu of parental care or supervision is offered at the same time to six (6) or fewer individuals who are not relatives of the care giver, but may not contain more than a total of eight (8) individuals receiving day care.

DAYS.

Calendar days, unless otherwise specified in this ordinance.

DEVELOPMENT.

The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance; any change in use, or alteration or extension of the use, of land.

DEVELOPMENT PLAN REVIEW.

The process whereby authorized local officials review the site plans, maps, and other documentation of a development to determine the compliance with the stated purposes and standards of the ordinance also known as 'site plan review'.

DISTRICT. (See ZONING USE DISTRICT)**DRAINAGE SYSTEM.**

A system for the removal of water from land by drains, grading, or other appropriate means. These techniques may include runoff controls to minimize erosion and sedimentation during and after construction or development, the means for preserving surface and groundwaters, and the prevention and/or alleviation of flooding.

DREDGED MATERIAL.

Material that is dredged or excavated from coastal waters or from rivers, lakes or streams.

DRIVE-IN OR DRIVE-THROUGH FACILITY.

An establishment that, by design of physical facilities or by service or packaging procedures, encourages or permits customers to receive a service or obtain a product while remaining in a motor vehicle, including, but not limited to, restaurants, banks and retail establishments.

DUPLEX.

A type of two-family dwelling in which the dwelling units are separated by a common wall.

DWELLING UNIT.

A structure or portion thereof providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

- a. ONE FAMILY DWELLING: A building designed for, or occupied by one family.
- b. TWO-FAMILY DWELLING A freestanding building, designed or intended exclusively for residential use containing two dwelling units. (This can be two attached dwelling units.)
- c. MULTI-FAMILY DWELLING: A freestanding building, designed or intended exclusively for residential use containing three or more dwelling units. (This can be more than two attached dwelling units.)

EARTH REMOVAL.

The extraction or removal of any sand, gravel, loam, topsoil, clay, shale or rock from any tract of land or water body. Earth removal shall also be included to mean uses customarily accessory to and necessary for earth removal operations, including rock crushing, washing, sorting, storing and other treatment of soil excavated on the site, but specifically excluding any processing of soil transported from off-site areas, and the manufacturing of soil-related products such as premixed concrete, bricks, block and the like.

Excluded from this definition is earth removal involving the process of grading land:

- a. For the construction of a building for which a building permit has been issued; or
- b. For the construction of a roadway; or
- c. For a subdivision in accordance with a plat, plan or plans approved by the Planning Board.

Earth Removal is further governed by the provisions of Portsmouth Ordinance #107 "Regulating, Controlling and Licensing Earth Removal".

EASEMENT.

A right-of-way granted, but not dedicated, for limited use on private land for a public or quasi-public purpose and within which the owner of the property shall not erect any structures.

EXTRACTIVE INDUSTRY.

The extraction of minerals, including: solids, such as coal and ores, loam, peat, sand, gravel, clay or silt; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

FAMILY.

A person or persons related by blood, marriage, or other legal means. See also "Household".

FLOOD PLAIN or FLOOD HAZARD AREA.

As defined in section 45-22.2-4 [of the Rhode Island General Laws]. An area that has a one percent (1%) or greater chance of inundation in any given year, as delineated by the federal emergency agency pursuant to the National Flood Insurance Act of 1968, as amended (P.L. 90-448) [42 U.S.C. 4011 et seq.]. Further definitions with reference to floodplains, flood hazard areas, and other related terms are provided in Article III of this ordinance.

GROSS FLOOR AREA.

The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

HALF-STORY

That portion of a building next beneath a sloping roof and in which there are less than 4 feet vertically between the top of the floor and the intersection of the bottoms of the rafters with the interior faces of the wall.

HALFWAY HOUSES.

A residential facility for adults or children who have been institutionalized for criminal conduct and who require a group setting to facilitate the transition to a functional member of society.

HARDSHIP.

- a. In granting a use variance the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and
- b. In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience, which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property. The fact that a use may be more profitable or more valuable after the relief is granted shall not be grounds for relief.

HAZARDOUS USE.

Any use which is offensive or noxious by reason of potential of fire, noise or vibration, dust, gas, fumes, odor, smoke, cinders, flashing or excessively bright light, refuse matter or electromagnetic radiation. Any use which is potentially hazardous to health or safety because of danger of flooding, inadequacy of drainage or inaccessibility to fire fighting apparatus or other protective service or any use which creates excessive noise beyond the property line. Any use which emits hazardous materials, as defined by the State and EPA, into the air or water.

HOME OCCUPATION.

Any activity customarily carried out for gain by a resident, conducted as an accessory use in the resident's dwelling unit. An occupation or a profession which:

- a. Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit;
- b. Is carried on by a member of the family residing in the dwelling unit;
- c. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes; and
- d. Conforms to the following conditions:
 - (1) Performed by the resident and using no more than 150 sq. ft. of floor area and such activity shall not be visible from a lot line.
 - (2) There shall be no exterior display, no exterior sign (except as permitted under Article IX.), no exterior storage of material and no other exterior indication of the home occupation or variation from the residential character of the principal building.
 - (3) No vibration, smoke, dust, odors, heat or glare or offensive noise shall be produced.
 - (4) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.

(5) Any parking required for the conduct of such home occupation shall be provided off the street and not in a required front yard.

HOTEL-MOTEL.

A structure containing sleeping rooms with or without a common eating facility; each room having its own private toilet facilities and each room let for compensation.

HOUSEHOLD.

One or more persons living together in a single dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit. The term "household unit" shall be synonymous with the term "dwelling unit" for determining the number of such units allowed within any structure on any lot in a zoning district. An individual household shall consist of any one of the following:

- a. A family, which may also include servants and employees living with the family; or
- b. A person or group of up to four (4) unrelated persons living together who are not within the second degree of kinship to each other, as defined by Civil Law.

HOSPITAL.

A health care facility with an organized medical staff providing for 24-hour in-patient services for diagnosis, care and treatment of two (2) or more individuals unrelated by blood or marriage.

IMPERVIOUS SURFACE.

Any material that substantially reduces or prevents the infiltration of stormwater.

INFEASIBLE

Any condition brought about by any single factor or combination of factors, as a result of limitations imposed on the development by conditions attached to the zoning approval, to the extent that it makes it impossible for a public agency, nonprofit organization, or limited equity housing cooperative to proceed in building or operating low or moderate income housing without financial loss, within the limitations set by the subsidizing agency of government, on the size or character of the development, on the amount or nature of the subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the public agency, nonprofit organization, or limited equity housing cooperative. ^{vii}

KENNEL

A use involving the permanent or temporary keeping or treatment of animals for commercial purposes. Maintaining pets as part of residential occupancy, breeding pedigree animals by a single owner (either as a hobby or for profit), and raising of livestock for farming purposes are not within this definition.

LAND DEVELOPMENT PROJECT.

A project in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, planned development and/or cluster development for residential, commercial, institutional, recreational, open space, and/or mixed uses as may be provided for in the zoning ordinance.

LARGE SCALE RETAIL DEVELOPMENT. ^{viii}

Any new or expanded retail business, office or consumer service development totaling greater than 25,000 sq. ft. in one or more buildings as approved by the Planning Board as a Planned Retail/Service Development.

LETTER OF ELIGIBILITY

A letter issued by the Rhode Island Housing and Mortgage Finance Corporation in accordance with § 42-55-5.3(a) of the Rhode Island General Laws. ^{ix}

LEVEL OF SERVICE. ^x

The Highway Capacity Manual, published by the Transportation Research Board lists the following levels of service;

A	=	Free Flow
B	=	Reasonably free flow
C	=	Stable flow
D	=	Approaching unstable flow
E	=	Unstable flow
F	=	Forced or breakdown flow

The Level of Service for any road or intersection and the estimated Level of Service as a result of a proposed development shall be determined by methods described in the Highway Capacity Manual.

Level of Service (LOS)	Control Delay per Vehicle (sec/veh)	Description
A And B	10(A) > 10 and 20 (B)	No delays at intersection with smooth progression of traffic. Uncongested operations; all vehicles clear in a single cycle.
C	> 20 and 35	Moderate delays at intersection with satisfactory to good progressions of traffic. Light congestion; occasional back-ups on critical approaches.
D	>35 and 55	Forty (40) percent probability of delays of one cycle or more at every intersection. No progression of traffic along the roadway with 90 percent probability of being stopped at every intersection experiencing "D" condition. Significant congestion on critical approaches, but intersection functional. Vehicles required to wait through more than one cycle during short peaks. No long standing lines formed.
E	> 55 and 80	Heavy traffic flow condition. Delays of two or more cycles probable. No progression. 100 percent probability of stopping at intersection. Limit of stable flow. Blockage of intersection may occur if traffic signal does not provide for protected turning movements.
F	> 80	Unstable traffic flow. Heavy congestion. Traffic moves in forced flow condition. Three or more cycles to pass through intersection. Total breakdown with stop-and-go operation.

Source: The latest edition of Highway Capacity Manual (HCM) published by the Transportation Research Board, 2000.

LOCAL BOARD

Any Town Zoning Board of Review, Planning Board, Planning Board of Review, or Building Inspector; or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building, subdivision, or zoning laws; or the Town Council.^{xi}

LOT.

Either:

- a. The basic development unit for determination of lot area, depth, and other dimensional regulations; or
- b. A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

All lots shall be undivided by a street, under one ownership, with ascertainable boundaries established by deed or deeds of record or a segment of land ownership, defined by lot boundary lines on a land division plan duly approved by the Planning Board under the Subdivision Control Ordinance.

LOT AREA.

The total area within the boundaries of a lot, excluding any street right-of-way, usually reported in acres or square feet. (See also Developable Lot Area under Article IV.)

LOT BUILDING COVERAGE.

The amount of area on a lot covered by the horizontal cross-section of structures. Lot coverage shall be measured by the horizontal cross-section of structures. The horizontal cross section of a structure will include overhangs, patios, porches, steps, etc.

LOT DEPTH.

The distance measured from the front lot line to the rear lot line. For lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

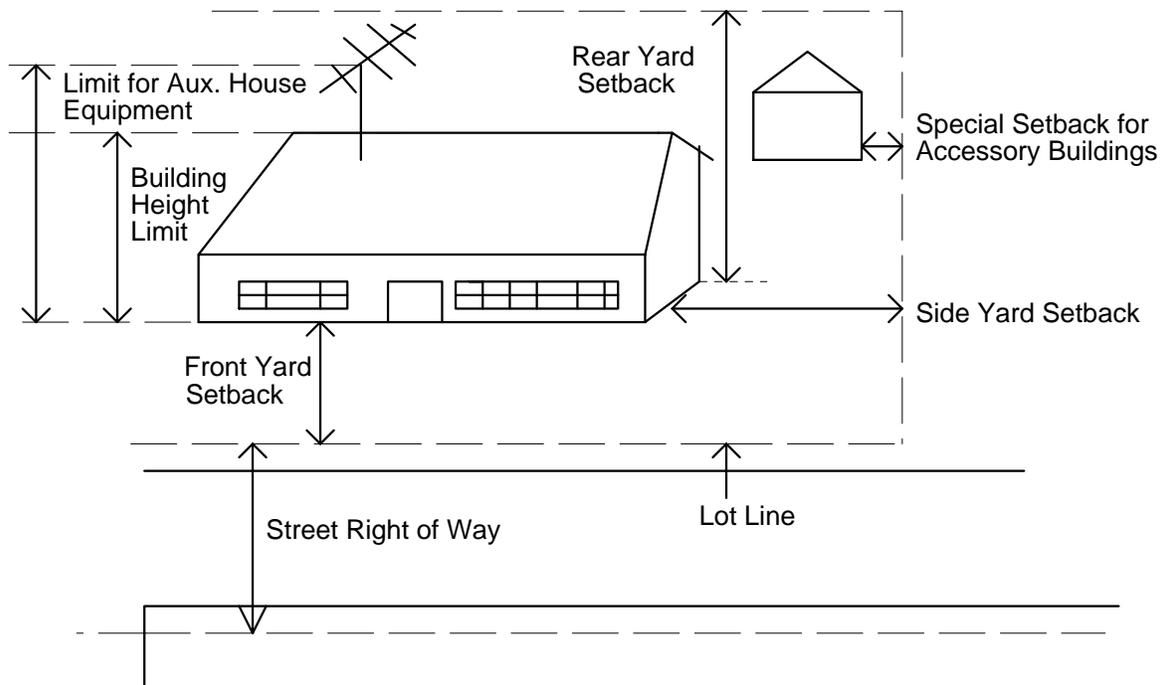
LOT FRONTAGE.

That continuous portion of a lot abutting a street, measured along a straight line connecting the point of intersection of the side lot lines with the front lot line.

LOT LINE.

A line of record, bounding a lot, which divides one lot from another lot or from a public or private street or any other public or private space and shall include:

- a. FRONT: the lot line separating a lot from a street right-of-way. In the case of a lot that abuts more than one street, the street address dictates which street lot line is the front.
- b. REAR: the lot line opposite and most distant from the front lot line, or in the case of triangular or otherwise irregularly shaped lots, an assumed line at least ten feet (10') in length entirely within the lot, parallel to and at a maximum distance from the front lot line.
- c. SIDE: any lot line other than a front or rear lot line. On a corner lot, a side lot line may be a street lot line, depending on requirements set forth herein.



LOT, THROUGH.

A lot which fronts upon two (2) parallel streets, or which fronts upon two (2) streets which do not intersect at the boundaries of the lot.

LOT WIDTH.

The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum front setback line.

LOW OR MODERATE INCOME HOUSING.

“Low or moderate income housing” means any housing subsidized by the federal, state, or municipal government under any program to assist the construction or rehabilitation of housing as low or moderate income housing, as defined in the applicable federal or state statute, or local ordinance whether built or operated by any public agency or any nonprofit organization, or by any limited equity housing cooperative or any private developer, that will remain affordable for ninety-nine (99) years or such other period that is either agreed to by the applicant and town but shall not be for a period of less than thirty (30) years from initial occupancy through a land lease and/or deed restriction or prescribed by the federal or state subsidy program but shall not be for a period less than thirty (30) years from initial occupancy through a land lease and/or deed restriction.^{xii}

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 flood hazard section of this ordinance.

MAINTENANCE GUARANTEE.

Any security which may be required and accepted by a governmental agency to ensure that necessary improvements will function as required for a specific period of time.

MARINA.

An area for the storage or mooring of boats with frontage on a navigable body of water and with facilities for the landing of boats.

MASS STORAGE OF FUEL - fuel storage in tanks greater than 12,000 gallons each.^{xiii}

MEETING HOUSING NEEDS

Adoption of the implementation program of an approved affordable housing plan and the absence of unreasonable denial of applications that are made pursuant to an approved affordable housing plan in order to accomplish the purposes and expectations of the approved affordable housing plan.^{xiv}

MERE INCONVENIENCE.

See section 45-24-41 [of the Rhode Island General Laws]. A situation in which there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property. See also Article VI. on dimensional variances.

MIXED USE.

A mixture of land uses within a single development, building, or tract.

MOBILE HOME - TRAILER.

- a. **MOBILE HOME:** A transportable, single family dwelling unit built on a chassis suitable for year round occupancy and containing the same water supply, waste disposal and electrical conveniences as immobile housing.
- b. **TRAILER:** The following shall be considered a trailer:
 - (1) **TRAVEL TRAILER:** A vehicular portable structure built on a chassis, designed as a temporary dwelling for travel, recreation and vacation, having body width not exceeding 8 feet and a body length not exceeding 32 feet.
 - (2) **PICK-UP COACH:** A structure to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.
 - (3) **MOTOR HOME:** A portable temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
 - (4) **CAMPING TRAILER:** A folding structure mounted on wheels and designed for travel, recreation and vacation use.

MOBILE HOME OR TRAILER PARK.

A parcel of land which has been planned and improved for the placement of mobile homes or trailers for transient or nontransient use and is designed to accommodate two or more mobile homes or trailers.

MULTI-FAMILY BUILDING.

A building containing three (3) or more units.

MUNICIPAL GOVERNMENT SUBSIDY

Assistance that is made available through a town program sufficient to make housing affordable, as affordable housing is defined in § 42-128-8.1(d)(1) of the Rhode Island General Laws; such assistance may include, but is not limited to, direct financial support, abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal subsidies, and any combination of forms of assistance. ^{xv}

NONCONFORMANCE.

A building, structure, or parcel of land, or use thereof, lawfully existing at the time of the adoption or amendment of a zoning ordinance and not in conformity with the provisions of such ordinance or amendment. Nonconformance shall be of only two (2) types:

- a. NONCONFORMING BY USE: a lawfully established use of land, building, or structure which is not a permitted use in that zoning district. A building or structure containing more dwelling units than are permitted by the use regulations of a zoning ordinance shall be nonconforming by use; or
- b. NONCONFORMING BY DIMENSION: a building, structure, or parcel of land not in compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations include all regulations of the zoning ordinance, other than those pertaining to the permitted uses. A building or structure containing more dwelling units than are permitted by the use regulations of a zoning ordinance shall be nonconforming by use; a building or structure containing a permitted number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot area per dwelling unit regulations, shall be nonconforming by dimension.

NOTICE OF NONCOMPLIANCE.

A notice issued by the zoning enforcement officer of Portsmouth informing the applicant for development approval that the application is not in compliance with Portsmouth's zoning regulations.

NURSING HOME.

A health care facility primarily intended to provide care for the elderly. A nursing home may provide different levels of care according to the needs of the individual patient. Said levels of care may include skilled care beds, intermediate care facilities, congregate living units (individual living units with limited cooking and eating facilities provided as an alternative to common eating facilities), independent living units (apartments with full eating facilities enabling elderly patients to maintain a more independent life style), adult day care and all other services reasonably ancillary to the operation of a modern nursing home. Density requirements for a nursing home shall be governed by the maximum percentage of lot coverage provisions as set forth in Article VII, Section A Apartments.

OCCUPIED.

Occupied" shall include the words "designed to be, arranged to be, or intended to be occupied".

OPEN SPACE.

Any parcel or area of land or water set aside, dedicated, designated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that the area may be improved with only those buildings, structures, streets, and off-street parking and other improvements that are designated to be incidental to the natural openness of the land.

OVERLAY DISTRICT.

A district established in a zoning ordinance that is superimposed on one or more districts or parts of districts and that imposes specified requirements in addition to, but not less, than those otherwise applicable for the underlying zone.

PARCEL.

A lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development. (See also Lot.)

PARKING AREA OR LOT.

That portion of a development that is used by vehicles for access, circulation, parking, and loading and unloading. It comprises the total of circulation areas, loading and unloading areas, and parking spaces.

PARKING SPACE.

An area containing not less than the square footage required by Article IX. of this ordinance to be used exclusively as a parking stall and maneuvering space for one motor vehicle.

PERFORMANCE STANDARDS.

A set of criteria or limits relating to elements which a particular use or process either must meet or may not exceed.

PERMITTED USE.

A use by right which is specifically authorized in a particular zoning district.

PLAT.

A map or maps of a subdivision or land development plan showing the location, boundaries, and ownership of individual properties.

PLANNED DEVELOPMENT.

A "land development project", as defined herein, and developed according to plan as a single entity and containing one or more structures and/or uses with appurtenant common areas.

PLANNED UNIT DEVELOPMENT^{xvi} - projects in which one or more lots, tracts or parcels

are developed or proposed to be developed as a coordinated site for a complex of uses, units or structures, including:

PLANNED INDUSTRIAL DEVELOPMENT - a planned, coordinated development of a tract or tracts of land with two or more buildings as an environment for a variety of transportation, storage or industrial uses and related activities. Such development is planned, designed, constructed and managed on an integrated and coordinated basis with particular attention given to on-site vehicular circulation, parking, utility needs, building design and location and open space. The project is developed or controlled by a single proprietary entity and has an enforceable master plan and/or covenants, conditions and restrictions. The development may consist of one or more parcels, condominium ownership or a combination thereof and may contain public and/or private streets. For the purposes of this definition an industrial use is one engaged in basic processing and manufacturing from raw or extracted materials, of non-hazardous finished or unfinished products or parts and including processing, compounding, stamping, fabrication, assembly, treatment, packaging, sale or distribution, and incidental storage of such products or parts, the testing of such products or parts and research and development. Such uses produce no noise, odor, smoke or vibration in excess of state or federal standards or specific local regulation and produces no heat, glare, dust, dirt, odors or gases perceptible at any lot line.

PLANNED CORPORATE DEVELOPMENT- a planned, coordinated development of a tract or tracts of land with two or more buildings as an environment for a variety of office, management, regulatory and light industrial uses and related activities. Such development is planned, designed, constructed and managed on an integrated and coordinated basis with particular attention given to on-site vehicular circulation, parking, utility needs, building design and location and open space. The project is developed or controlled by a single proprietary entity and has an enforceable master plan and/or covenants, conditions and restrictions. The development may consist of one or more parcels, condominium ownership or a combination thereof and may contain public and/or private streets. For the purposes of this definition a light industrial use is one engaged in manufacture from previously prepared materials, of non-hazardous finished products or parts and including processing, fabrication, assembly, treatment, packaging, sale or distribution, incidental storage of such products or parts, the testing of such products or parts and research and development, but excluding basic industrial processing. Such uses produce no noise, heat or glare perceptible at any lot line and emit no vibration, smoke, dust, dirt, toxic or offensive odors or gases.

PLANNED MARINE TRADE DEVELOPMENT (PMTD) - a planned, coordinated development of a tract or tracts of land with two or more buildings as an environment for a variety of marine trade related activities. Such development is planned, designed, constructed and managed on an integrated and coordinated basis with particular attention given to on-site vehicular circulation, parking, open water access, storage and utility needs, building design and location and open space. The project is developed or controlled by a single proprietary entity and has an enforceable master plan and/or covenants, conditions and restrictions. The development may consist of one or more

parcels, condominium ownership or a combination thereof and may contain public and/or private streets.

PLANNED MARINA VILLAGE DEVELOPMENT (PMVD) - a planned, coordinated development of a tract or tracts of land with two or more buildings as an environment for a variety of residential, recreational and marina-related uses. Such development is planned, designed, constructed and managed on an integrated and coordinated basis with particular attention given to integration of land-based uses with marina and water-based uses, on-site vehicular circulation, parking, shared water access, storage and utility needs of the PUD only, building design and location and open space. The project is developed or controlled by a single proprietary entity and has an enforceable master plan and/or covenants, conditions and restrictions. The development may consist of one or more parcels, condominium ownership or a combination thereof and may contain public and/or private streets. Said development must possess not less than 2,000 linear feet of shore frontage exclusive of ponds and/or lakes, and must include marina facilities.

PLANNED RESORT DEVELOPMENT (PRD) - a planned, coordinated development of a tract or tracts of land with two or more buildings as an environment for a variety of residential, recreational and related uses. Such development is planned, designed, constructed and managed on an integrated and coordinated basis with particular attention given to on-site vehicular circulation, parking, shared water access (if any), storage and utility needs of the PUD only, building design and location and open space. The project is developed or controlled by a single proprietary entity and has an enforceable master plan and/or covenants, conditions and restrictions. The development may consist of one or more parcels, condominium ownership or a combination thereof and may contain public and/or private streets.

PLANNED RETAIL/SERVICE DEVELOPMENT - a planned, coordinated development of a tract or tracts of land with two or more buildings as an environment for a variety of retail, service, and office uses and related activities. Such development is planned, designed, constructed and managed on an integrated and coordinated basis with particular attention given to on-site vehicular circulation, parking, utility needs, building design and location and open space. The project is developed or controlled by a single proprietary entity and has an enforceable master plan and/or covenants, conditions and restrictions. The development may consist of one or more parcels, condominium ownership or a combination thereof and may contain public and/or private streets.

PLANNING BOARD.

The body established by the Town which has the responsibility to prepare a comprehensive plan and make recommendations concerning that plan to the Town Council, to rule upon subdivisions as provided in the Subdivision Ordinance, and to rule upon, review or advise upon other proposals as provided in this Ordinance.

PUBLIC IMPROVEMENT.

Any drainage facility, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement, or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement of which local government responsibility is established.

PUBLIC OPEN SPACE.

An open space conveyed or otherwise dedicated to a municipality, municipal or state agent, board of education, or public body for recreation or conservation uses.

RETAIL BUSINESS, OFFICE OR CONSUMER SERVICE COMPLEX, EXISTING^{xvii}

A development of one or more commercial establishments primarily retail, office or consumer service oriented in nature, located on a single lot or contiguous lots upon which such use exists at the time of enactment of this amendment and consisting of 5,000 gross square feet of floor space or more, or a total land area (including parking and travel areas) of 20,000 square feet or more. Provided, however, that floor space located within a story which is more than one half, vertically, below the average natural grade of the ground adjoining said building shall be exempt from the floor space requirement. (See ARTICLE V. Table of Use Regulations, E. Retail Business and Consumer Service Establishments Uses, 14.2.)

RETAIL BUSINESS, OFFICE OR CONSUMER SERVICE COMPLEX, NEW

A development of one or more commercial establishments primarily retail, office or consumer service oriented in nature, located on a single lot or contiguous lots upon which no such use exists at the time of enactment of this amendment and consisting of 5,000 gross square feet of floor space or more, or a total land area (including parking and travel areas) of 20,000 square feet or more. Provided, however, that floor space located within a story which is more than one half, vertically, below the average natural grade of the ground adjoining said building shall be exempt from the floor space requirement. (See Article V. Table of Use Regulations, E. Retail Business and Consumer Service Establishments Uses, 14 and 14.1 and Article VII, Section G.)

RIGHT-OF-WAY.

A strip of land occupied or intended to be occupied by a street, crosswalk, sidewalk or other pedestrian path, bicycle path, railroad, road, electric transmission line, gas pipeline, water main, sanitary or storm sewer main, shade trees, pier or dock or other special use, including preservation of scenic vistas.

ROADSIDE STAND.

A non-enclosed or semi-enclosed structure for the sale of agricultural or horticultural products the major portion of which are grown or produced on the premises or an adjacent parcel^{xviii} and must provide off-street parking.

SCREENING.

The method by which a view of one site from another adjacent site is shielded, concealed, or hidden. Screening techniques include fences, walls, hedges, berms, or other features.

SETBACK LINE or LINES.

A line or lines parallel to a lot line at the minimum distance of the required setback for the zoning district in which the lot is located that establishes the area within which the principal structure must be erected or placed. (See also definition of "yard" and the Land Space Requirements Table.)"

SIGN.

See Article IX. Signs.

SITE PLAN.

The development plan for one or more lots on which is shown the existing and/or the proposed conditions of the lot.

SPECIAL USE.

A regulated use which is permitted pursuant to the special-use permit issued by the authorized governmental entity, pursuant to section 45-24-42 [of the Rhode Island General Laws]. Formerly referred to as a special use permit.

SPECIAL USE PERMIT. (See Special Use.)**START OF CONSTRUCTION.**

The date the building permit was issued, provided the actual start of construction, repair, reconstruction, 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 a 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 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.

STREET.

A public or private thoroughfare used, or intended to be used, for passage or travel by motor vehicles. Streets may be further classified by the functions they perform.

STREET, ACCESS TO.

A way of approaching or entering a property. All lots of record shall have adequate and permanent access to a public street for all vehicles normally associated with the uses permitted of that lot and for emergency vehicles.

STREET, PRIVATE.

A way open to vehicular ingress and egress, not owned and maintained by the Town of Portsmouth, established as a separate tract for the benefit of certain, adjacent properties. This definition shall not apply to driveways.

STREET, PUBLIC.

All public property reserved or dedicated for street traffic, owned and maintained by the Town of Portsmouth.

STORY.

That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one-half of such portion vertically is below the average natural grade of the ground adjoining such building.

SPACE-HABITABLE.

Those areas within the exterior walls of a dwelling which have head room or not less than seven (7) feet measured vertically upward from the top of the finished floor but excluding basement areas and excluding areas in any accessory structure attached to any dwelling.

STRUCTURE.

A combination of materials to form a construction for use, occupancy, or ornamentation, whether installed on, above, or below, the surface of land or water.

SUBSTANDARD LOT OF RECORD.

Any lot lawfully existing at the time of adoption or amendment of a zoning ordinance and not in conformance with the dimensional and/or area provisions of that ordinance.

SUBSTANTIAL IMPROVEMENT.

Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either, a) before the improvement or repair is started, or b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition 'substantial improvement' is considered to occur when the first alteration of any wall, ceiling, floor or other alteration affects the external dimensions of the structure. The term does not, however, include either 1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specification which is solely necessary to assure safe living conditions or 2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

TOWN

The Town of Portsmouth, Rhode Island. ^{xix}

USE.

The purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.

VARIANCE.

Permission to depart from the literal requirements of a zoning ordinance. An authorization for the construction or maintenance of a building or structure, or for the establishment or

maintenance of a use of land, which is prohibited by a zoning ordinance. There shall be only two (2) categories of variance, a use variance or a dimensional variance.

a. USE VARIANCE. Permission to depart from the use requirements of a zoning ordinance where the applicant for the requested variance has shown by evidence upon the record that the subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the zoning ordinance.

b. DIMENSIONAL VARIANCE. Permission to depart from the dimensional requirements of a zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations. However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

VESTED RIGHTS.

The right to initiate or continue the development of an approved project under the regulations that were in effect at the time of approval, even if, after the approval, the regulations change prior to the completion of the project (See Article XV. for validity periods for each stage of approval).

VETERINARY HOSPITAL

A hospital used solely for the medical and surgical treatment of animals under the care of a veterinarian.

VISION CLEARANCE.

The land adjoining a street intersection that is kept clear of obstructions between three and seven feet above the ground to protect the visibility and safety of motorists and pedestrians. The protected sight distance area is the triangle with legs that are the intersecting flowlines of two streets at an intersection. The legs shall extend thirty-five (35) feet away from the intersection of the flowlines.

WATERFRONT DISTRICT.

This district must contain a minimum of fifty acres and shore frontage of 2,500 linear feet (excluding ponds, lakes, wharves, piers, breakwaters and other structures). The district's purpose is to cater to marine activities such as commercial boat docks, boat service areas, marine equipment stores, boat storage and construction yards, boat repair facilities, bait and tackle shops, wholesale and retail fish and shellfish establishments, refreshment stands and marine oriented clubs. Other uses to be permitted in accordance with the use table.

WATERS.

As defined in section 46-12-1(b)[of the Rhode Island General Laws].

WETLAND, COASTAL.

As defined in section 2-1-14 [of the Rhode Island General Laws]. A coastal wetland shall mean any salt marsh bordering on the tidal waters of this state, whether or not the tide waters reach the

littoral areas through natural or artificial water courses, and such uplands contiguous thereto, but extending not more than fifty (50) yards inland therefrom, as the director shall deem reasonably necessary to protect those salt marshes for the purposes set forth in 2-1-13 [of the Rhode Island General Laws].

WETLAND, FRESHWATER.

As defined in section 2-1-20 [of the Rhode Island General Laws]. "Fresh water wetlands" shall include, but not limited to, marshes, swamps, bogs, ponds, rivers, river or stream flood plains or banks, area subject to flooding or storm flowage; emergent and submergent plant communities in any body of fresh water including rivers and streams and that area of land within fifty feet (50') of the edge of a bog, marsh, swamp, or pond, as defined in Section 2-1-20 [of the Rhode Island General Laws].

YARD.

- a. FRONT YARD: An open space extending the entire width of a lot from lot sideline to lot sideline between the front lot line or lines and the nearest point of a building.
- b. REAR YARD: An open space extending the entire width of a lot line from sideline to sideline between the rear lot line or the corner of a triangular lot farthest from the front lot line and the nearest point of the building.
- c. SIDE YARD: An open space extending along a sideline of a lot (between the front yard and the rear yard on such lot and extending between the sideline of such lot to the nearest point of the building.

(See also definition of 'setback line' and the 'Land Space Requirements Table.)

ZONING.

The reservation of certain specified areas within Portsmouth for building and structures, or use of land, for certain purposes with other limitations such as height, lot coverage, and other stipulated requirements.

ZONING BOARD OF REVIEW

The body established by the Town pursuant to Town Charter and Article XII. of this ordinance, which has the power to hear and decide appeals, of determinations made by the Zoning Enforcement Office, to authorize variances from this ordinance, to authorize special use permits, and to hear and decide other matters pursuant to Articles XIII. and XIV. of this Ordinance.

ZONING CERTIFICATE.

A document signed by the zoning enforcement officer, as required in this zoning ordinance, which acknowledges that a use, structure, building or lot either complies with or is legally nonconforming to the provisions of the municipal zoning ordinance or is an authorized variance or modification therefrom.

ZONING ENFORCEMENT OFFICER.

The persons charged with the administration and enforcement of the Zoning Ordinance shall be: (1) the Building Official of the Town of Portsmouth, whose minimum qualifications shall be

official certification as a building official or inspector in the State of Rhode Island, together with a working knowledge of zoning principles and practices, and/or (2)the Zoning Enforcement Officer of the Town of Portsmouth, whose minimum qualifications shall be a working knowledge of zoning principles and practices. ^{xx}

ZONING MAP.

The map or maps which are a part of the zoning ordinance and which delineate the boundaries of all mapped zoning districts within the physical boundary of Portsmouth.

ZONING ORDINANCE.

An ordinance enacted by the Town Council pursuant to this ordinance and in the manner providing for the adoption of ordinances in the Town's home rule charter, which sets forth regulations and standards relating to the nature and extent of uses of land and structures, which is consistent with the comprehensive plan of Portsmouth as defined in Title 45 Chapter 22.2 [of the Rhode Island General Laws].

ZONING USE DISTRICTS.

The basic unit in zoning, either mapped or unmapped, to which a uniform set of regulations applies, or a uniform set of regulations for a specified use. The districts include, but are not limited to: agricultural, commercial, industrial, institutional, open space, and residential. Each district may include sub-districts. Districts may be combined.

ⁱ Adopted June 26, 2006.

ⁱⁱ Adopted February 4, 2008

ⁱⁱⁱⁱⁱⁱ Adopted September 9, 1997. Previous wording stated:

Cultivation and harvesting of products, including fish and vegetation, that are produced naturally in freshwater wetlands, and installing cribs, racks and other in-water structures for cultivating these products, but does not include filling, dredging, post mining, or the construction of any buildings or any water-regulating structures.

^{iv} Adopted February 4, 2008

^v Adopted June 26, 2006.

^{vi} Adopted June 26, 2006.

^{vii} Adopted June 26, 2006.

^{viii} Adopted February 4, 2008

^{ix} Adopted June 26, 2006.

^x Adopted February 4, 2008

^{xi} Adopted June 26, 2006.

^{xii} Adopted June 26, 2006

^{xiii} Adopted June 17, 2002.

^{xiv} Adopted June 26, 2006

^{xv} Adopted June 26, 2006

^{xvi} Planned Unit Development adopted September 29, 2002.

^{xvii} Prior to the adoption of the current wording on October 10, 1996 for RETAIL BUSINESS, OFFICE OR CONSUMER SERVICE COMPLEX, EXISTING and RETAIL BUSINESS, OFFICE OR CONSUMER SERVICE COMPLEX, NEW, the definition of RETAIL BUSINESS, OFFICE OR CONSUMER SERVICE COMPLEX read as follows:

A new development of one or more commercial establishments primarily retail, office or consumer service oriented in nature, located on a single lot or contiguous lots upon which no such use exists at the time of application and consisting of 5,000 gross square feet of floor space or more, or a total land area (including parking and travel areas) of 20,000 square feet or more. Provided however, that floor space located within a story which is more than one half vertically below the average natural grade of the ground adjoining said building shall be exempt from the floor space requirement. Such development shall be a special use permit per the provisions of Article VII. Section E.

^{xviii} "or an adjacent parcel" adopted October 25, 2010.

^{xix} Adopted June 26, 2006

^{xx} Adopted June 13, 2005. The former wording was:

The local official designated by the Town to administer and enforce this ordinance, pursuant to Article XIII. of this ordinance. For the purposes of this ordinance, that official shall be the Building Inspector.

13 Adopted February 4, 2008.

ARTICLE III. DIVISION INTO DISTRICTS

Section A: ESTABLISHMENT OF DISTRICTS

The Town of Portsmouth is hereby divided into the following zoning districts:

RESIDENTIAL DISTRICTS

- R-10
- R-20
- R-30
- R-40
- R-60

COMMERCIAL DISTRICTS

- C-1

INDUSTRIAL DISTRICTS

- I-L (Light)
- I-H (Heavy)

WATERFRONT DISTRICTS

- WD

OPEN SPACE AND PUBLIC LANDS DISTRICT

- OS

WATER RESOURCE PROTECTION DISTRICT

- WRPD

REDEVELOPMENT DISTRICT

- RD

Section B: DISTRICT BOUNDARIES and DESCRIPTIONS

1. The boundaries of these districts are hereby established as shown on the map accompanying this Ordinance entitled "Zoning Map, Portsmouth, Rhode Island" dated January 15, 1980 and signed by the members of the Town Council of Portsmouth, and said Map, the original of which is hung in the Office of the Town Clerk, is hereby declared to be part of this Ordinance.

2. INTENT AND PURPOSES OF DISTRICTS

RESIDENTIAL DISTRICTS are intended to allow orderly development of residential dwellings designed to complement the natural features of the land, to promote suitable placement of buildings and related facilities in relation to the site and surrounding areas, with adequate living space and open space, to avoid overcrowding of land, to encourage good design, to avoid overburdening municipal facilities, and to insure compatibility with the immediate neighborhood and with the natural environment.

R-10 DISTRICT is a residential zone with minimum lot size of 10,000 sq. ft.

R-20 DISTRICT is a residential zone with minimum lot size of 20,000 sq. ft.

R-30 DISTRICT is a residential zone with minimum lot size of 30,000 sq. ft.

R-40 DISTRICT is a residential zone with minimum lot size of 40,000 sq. ft.

R-60 DISTRICT is a residential zone with minimum lot size of 60,000 sq. ft. and special restrictions to preserve and protect important natural resources.

COMMERCIAL DISTRICT C-1 is established to provide areas for commercial establishments and serve community and town-wide shopping and service needs.

TOWN CENTER DISTRICT - TC is established to provide for a pedestrian-friendly commercial district that is more densely developed than the Commercial C-1 zone. Developments in the Town Center District shall, to the extent possible, contribute to an atmosphere of a traditional New England town center. While allowing mixed uses and planned unit developments, this district is more restrictive than the C-1 district in terms of discouraging or prohibiting uses that are not conducive to its purpose. Other than prohibited uses, all proposed uses in the TC district are subject to special use permits and design review.¹

INDUSTRIAL DISTRICTS are established to encourage intensive industrial and business activities, with proper safeguards for protecting nearby residential areas and environmentally sensitive areas.

HEAVY INDUSTRIAL I-H is established to provide for levels of noise, vibration, smoke, odor and other evidence of industrial activity commensurate with State and Federal standards and other performance standards that may be set by the Town.

LIGHT INDUSTRIAL I-L is established to provide for a lesser level of noise, vibration, smoke, odor and other evidence of industrial activity commensurate with performance standards that may be set by the Town.

WATERFRONT DISTRICT WD is established primarily for businesses catering to marine and marine-related activities.

OPEN SPACE AND PUBLIC LANDS OS is established for all lands which shall be dedicated to open space, recreation, conservation, or public uses.

REDEVELOPMENT DISTRICT is existing or formerly property of the U.S. Navy generally known as the tank farms.

3. IDENTIFICATION OF CERTAIN DISTRICTS

Further identification of boundaries for certain districts is established by the Zoning Map and Lot numbers as follows:

R-60 is established by the Zoning Map and specific lot numbers as follows:

R-60 DISTRICT LOTS²

MAP 13

LOT: Founders Grove (junction of Route 138 & Boyd's Lane, State property).

MAP 28³

LOT: 71 (500 feet surrounding St. Mary's Pond, Sisson Pond and Lawton Valley Reservoir, measured landward from the high water line, not in Open Space District).

MAP 32

LOTS: 1, 1A, 1B, 2, 3 (south of Brook, 500 feet west of West Main Road to western lot line)

MAP 37

LOTS: 3, 5, 6, 7, 8, 9, 30, 31, 32, 33, 34

MAP 50

LOTS: 3⁴

MAP 59

LOTS: 17A, 19.

MAP 62

LOT: 6

R-60 DISTRICT LOTS (Prudence Island)

Map 71

LOT: 1

Map 72

LOTS: 1, 2 and 3

Map 73

LOTS: 25-A, 25-B

Map 74

LOTS: 16, 17, 18, 19, 20, and 23

Map 76

LOTS: 1, 2, 3, 5, 5-A, 5-B, 6, 6-A, 6-B

Map 77

LOTS: 79, 80, 109, 110, 111 and 114

Map 78

LOTS: 78 and 79

Map 79

LOTS: 1, 2 and 69

Map 80

LOT: 1

Map 81

LOTS: 5 and 5-A

Map 82

LOTS: 1 and 6

Map 83

LOTS: 1, 2, 3, 9, 10, 11, 12, 12-C, 12-D, 12-E, 12-I, 12-J, 12-K, 12-L, 12-M, 13 and 14

Map 84⁵

LOTS: 60-A, 60-B, 77, 78, 80, 81, 82, 83 and 84.

4. IDENTIFICATION OF NON-RESIDENTIAL DISTRICTS

Further identification of non-residential zoning district boundaries is established by the Zoning Map and Lot numbers as follows:

COMMERCIAL DISTRICT LOTS**MAP 19**

LOTS: 80⁶, 86, 87, 88, 89, 131, 132, 133, 134, 135

MAP 20

LOTS: 1, 303, 304, 305, 306, 307, 358, 359, 360, 361, 362

MAP 21

LOTS: 10, 11, 12, 13, 14, 15, 49, 50, 51, 52, 56, 57, 58, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 85A, 86, 86A, 104, 105, 139A, 141, 142, 143, 144, 145, 145A, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 160, 162

MAP 24

LOTS: 1, 2, 9, 10, 10A, 11, 12, 13, 14, 51, 52, 52A, 53, 53A, 54, 58, 59, 59A, 60, 61, 62, 63, 64

MAP 25

LOTS: 1, 2, 7, 8, 9, 16, 17, 21

MAP 29

LOTS: 1, 2, 3, 4, 5, 5A, 6, 7, 8, 9, 10, 11, 30, 31, 32, 32A, 33, 39, 40, 100, 101, 101A, 101B, 102, 103, 104, 105, 106, 107, 108, 113, 116, 117

MAP 31

LOTS: 1, 2, 3, 4, 4A, 15, 16, 17, 18, 19, 20, 20A, 21, 22, 23, 24, 24B, 25, 26, 27, 28, ~~29~~⁷, 29A, 29B, 30, 32, 32A, 33, 34, 34A, 126, 127, 128, 129, ~~79~~⁸, ~~80~~, ~~81~~, ~~82~~, 75, 76, 77, 78

MAP 33

LOTS: 41B

MAP 34

LOTS: 7⁹, 6¹⁰, 21, 22, 23, 24, 25, 26, 27, 33, 34, 35, 36, 37, 38, 39, 40, 41

MAP 35

LOTS: 15A, 16, 18

MAP 41

LOTS: 29¹¹

MAP 42

LOTS: 2, 35, 36, 43, 44, 90

MAP 44

LOTS: 10A, 11, 12, 13, 14, 15 (from West Main Road 500 feet east) 15A, 16, 17, 18, 19

MAP 45

LOTS: 1, 2, 43, 44, 44A, 89, 90, 91, 92, 93, 94, 95, 96 (268' north and 498' southeast of East Main Road)

MAP 47

LOTS: 32, 33, 34, 35, 36

MAP 51

LOTS: 15³¹ 16, 34, 34A, 34B, 34C, 35, 36, 37, 37A, 37B, 37D

ADD: Lots 4, 5, 12 footnote #32

MAP 55

LOTS: 4, 5, 8 and the easterly most three hundred (300) feet of Lots 9, 10, 11 & 12¹²

MAP 56

LOTS: 6, 7, 8

MAP 57

LOTS: 2, 3, 4, 5, 34B, 36

MAP 58

LOTS: 1, 2, 3

MAP 77

LOTS: 113¹³

TOWN CENTER COMMERCIAL DISTRICT LOTS¹⁴**MAP 33**

LOTS: 37, 38, 39, 40

MAP 34

LOTS: 1, 2, 3, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104

MAP 35

LOTS: 13, 14, 15 (772' west of East Main Road), 17, 19, 20, 21, 22, 23, 24, 25, 26

MAP 36

LOTS: 7, 8, 9, 11, 12, 12A, 13, 14 (434' east of East Main Road) 15, 16, 17, 18, 19, 61*

LIGHT INDUSTRY DISTRICT LOTS**MAP 37**

LOTS: 48, 69

MAP 38

LOTS: 1¹⁵, 5, 6, 7A, 7B, 7C, 7D, 7E, 11, 12, 13, 13A, 13B, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32.

MAP 43LOTS: 1 part ¹⁶**MAP 44**

LOTS: 1, 2, 3, 4, 5, 6, 7, 8, 10, 15 (see Commercial)

MAP 51 ¹⁷

LOTS: 47, 50, 53, 54, 55

MAP 52

LOT: 5

MAP 53:

LOTS: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 18A, 18B, 18C, 18D, 18E, 18F, 18G, 18H, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 32A, 18J

MAP 57LOTS: 6, 7, 7A, 7B ¹⁸**MAP 58**

LOTS: 50, 50A, 50B, 51, 52, 53

HEAVY INDUSTRY DISTRICT LOTS**MAP 16**LOT: 37, 40¹⁹.**MAP 17**

LOT: 8

MAP 22

LOTS: 1, 2, 3, 4, 10, 19, 20, 21, Lot 10 (500 feet East of RR)

MAP 23

LOT: 18 (500 feet East of RR)

MAP 26

LOTS: 1, 2, 2A, 3, 4, 10, 11, 12, 13

MAP 27LOTS: 6, 6A, 7, 24A, 24B²⁰, 25**MAP 32**

LOT: 3 (North of Brook from 500' west of West Main Road to western lot line)

MAP 50

LOTS: 1, 2, 5

MAP 51

LOT: 1

WATERFRONT DISTRICT LOTS**MAP 37**

LOTS: 36, 36A, 36B, 36C

MAP 43LOTS: 1 part ²¹, 3, 4, 5, 6, 7**MAP 50**

LOTS: 6, 7

OPEN SPACE AND PUBLIC LANDS DISTRICT LOTS**MAP 7**

LOT: 8.

MAP 13

LOT: 1.

MAP 25

LOT: 48.

MAP 37

LOT: 37

MAP 38

LOT: 6A

MAP 43LOT: 1 part ²², 1A.**MAP 49**

LOT: 44.

MAP 50

LOT 7 part (see note 22)

MAP 56

LOT: 4, 5.

MAP 59

LOTS: 15, 16, 17, 18, 20, 21, 25, 26.

MAP 60

LOT: 25

MAP 61

LOT: 6, 7, 8.

MAP 62

LOT: 3, 4, 5, 8, 9

* Indicates zone changed subject to filing of deed restriction.

REDEVELOPMENT DISTRICT LOTS²³

MAP 43

LOT: 1L

Section C: RULES FOR INTERPRETATION OF ZONING BOUNDARIES

Where uncertainty exists as to boundaries of zones, as shown on the Zoning Map, the following rules shall apply:

1. Boundaries indicated as following the center lines of a highway, street, railroad or utility right-of-way shall be construed to follow such center line.
2. Boundaries indicated as following property lines shall be construed to follow such property lines.
3. Boundaries indicated as following shore lines shall be construed to follow such shore lines (mean high water) and in the event of change in the shore line, shall be construed as moving with the actual shore line.
4. Boundaries indicated as approximately following the center lines of streams, rivers, ponds or other bodies of water shall be construed to follow such center lines or middle of said stream, river, pond or body of water.
5. Land created by the filling of a stream or water body shall be considered to be within the district of the land from which such fill was extended.
6. Boundaries indicated as approximately following Town limits shall be construed as following Town limits.
7. When a lot is situated in part in the Town of Portsmouth and in part in an adjacent municipality, the provisions of this Ordinance shall be applied as if the entire lot were situated in Portsmouth.
8. Boundaries indicated as parallel to, or extensions of, features indicated in 1 through 7 above shall be so construed.
9. Distances not specifically indicated on the Zoning Map nor in District Boundaries in Section B above shall be determined by the scale of the Zoning Map.
10. Where the exact location of a boundary line cannot be determined under the above subsections, the location of such line shall be determined by the zoning enforcement officer.
11. Where physical or natural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by the above subsections, the Zoning Board of Review shall interpret zoning district boundaries.

Section D: APPLICATION OF DISTRICT REGULATIONS

1. When a lot is transected by a Zoning District Boundary, the regulations of this Ordinance applicable to the larger part by area of such lot may also, at the option of the lot owner, be deemed to govern the smaller part beyond such Zoning District Boundary but only to a distance of not more than forty (40) linear feet in depth beyond such zoning District Boundary.
2. No building shall be erected except on a lot fronting on a public street, and there shall be not more than one principal building on any lot, except as allowed under this Ordinance.
3. No accessory building in a residential district may be converted to a principal use.
4. Notwithstanding any other provisions of this ordinance to the contrary, any structures, buildings and land owned, leased or used by the Town of Portsmouth may be erected, enlarged, or used by the Town of Portsmouth in the performance of its governmental functions, in any district, and said structures, buildings or lands so erected, enlarged, or used shall be exempt from the provisions of this ordinance.

Section E: OPEN SPACE AND PUBLIC LANDS DISTRICT

1. The open space and public lands district is established for all lands which shall be dedicated to open space, recreation, conservation, or public uses.
2. The following are the permitted uses:
 - a. Recreation
 - b. Conservation
 - c. Public Uses
 - d. Wildlife Management
 - e. Agriculture
 - f. Forest Management
 - g. Historic Monuments
 - h. Museum
 - i. Nonprofit historical restoration
 - j. Structures accessory to permitted uses, as a special use permit.
 - k. Utility lines, provided they are underground, as a special use permit.
 - l. On Town owned land, any use approved by the Portsmouth Town Council.

(Note: There shall not be a listing of permitted uses in this district in the Use Tables in Article V.)

3. No dimensional requirements shall be set for permitted uses in this district, provided that setbacks from abutting non-open space district parcels shall be those of said abutting district.

4. Special Use Permits

The Zoning Board of Review may permit in an open space district any use which will not interfere with the primary purpose of this district for open space, recreation, and conservation.

Section F: FLOOD HAZARD AREAS ²⁴

1. PURPOSE

A.) The purpose of this ordinance is to ensure public safety, to minimize hazards to persons and property from flooding, to protect watercourses from encroachment, and to maintain the capability of floodplains to retain and carry off floodwaters. The Town of Portsmouth elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

B.) The provisions herein governing the development and use of inland and tidal land subject to flood hazards shall be minimum provisions, shall take precedence over any other conflicting laws, ordinances, or codes, shall not impair or remove the necessity of compliance with any other applicable laws, ordinances, or codes and shall consider any flood plain management programs in neighboring municipalities.

2. APPLICABILITY

A.) All lands determined by the Building Official to be within Special Flood Hazard Areas and flood fringe lands shall be subject to the procedures and regulations established in this section.

B.) The Special Flood Hazard Areas are herein established as a floodplain overlay district. The District includes all special flood hazard areas within the Town of Portsmouth designated as Zone A, AE, V, or VE on the Newport County Flood Insurance Rate Map (FIRM) and Digital FIRM issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Newport County FIRM that are wholly or partially within the Town of Portsmouth are panel numbers 0011H, 0012H, 0013H, 0014H, 0018H, 0019H, 0038H, 0039H, 0076H, 0077H, 0079H, 0081H, 0082H, 0083H, 0084H, 0091H, 0092H, 0094H, 0101H, 0103H, 0111H, 0113H, dated April 5, 2010. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Newport County Flood Insurance Study (FIS) report dated April 5, 2010. The FIRM and FIS report and any revisions thereto are incorporated herein by reference and are on file with the Building Official of the Town of Portsmouth.

3. ADMINISTRATION

A.) Provisions of this section of the ordinance, including plan review for compliance, record keeping, enforcement and coordination with State and Federal agencies are administered by the Portsmouth Building Official or his/her designee.

B.) Violations of flood hazard regulations are administered per ARTICLE XVI of this ordinance.

C.) All proposed construction or other development within a Special Flood Hazard Area shall require a permit.

D.) If the construction or other development within a Special Flood Hazard Area is not covered by a building permit or other approved permit application, a flood hazard development permit shall be required. The application for a flood hazard development permit shall be submitted to the Portsmouth Building Official and shall include:

- 1) The name and address of the applicant;
- 2) An address or a map indicating the location of the construction site;
- 3) A site plan showing location of existing and proposed structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and the dimensions of the lot;
- 4) A statement of the intended use of the structure;
- 5) A statement as to the type of sewage system proposed;
- 6) Specification of dimensions of the proposed structures;
- 7) The specific datum used for all elevations;
- 8) The elevation (in relation to mean sea level) of the lowest floor, including basement, and if the lowest floor is below grade on one or more sides, the elevation of the floor immediately above;
- 9) Base flood elevation data for all new, relocated or substantially improved structures;
- 10) The elevation (in relation to mean sea level) to which the structure will be flood proofed;
- 11) The description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

E.) Prior to the issuance of a building or development permit, the applicant shall submit evidence that all necessary permits and approvals have been received from all government agencies from which approval is required by Federal or State law.

F.) All permit applications for construction or other development within a Special Flood Hazard Area shall be reviewed to determine whether the proposed site will be reasonably safe from flooding. All new construction and substantial improvements shall:

- 1) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- 2) be constructed with materials resistant to flood damage;
- 3) be constructed by methods and practices that minimize flood damages, and;
- 4) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

G.) All new subdivision proposals, including new manufactured home parks, shall be reviewed to determine whether the proposed site will be reasonably safe from flooding. All such proposals shall be reviewed to assure that:

- 1) they are consistent with the need to minimize flood damage within the flood-prone area,
- 2) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage,
- 3) adequate drainage is provided to reduce exposure to flood hazards.

4. REFERENCE TO EXISTING REGULATIONS

A.) The Special Flood Hazard Areas are established as a floodplain overlay district. All development in the district, including structural and non-structural activities, whether permitted by right or by special use permit must be in compliance with the following:

- Rhode Island State Building Code (as established under Rhode Island General Law § 23-27.3-100.1);
- Coastal Resources Management Program, Coastal Resource Management Council (RIGL § 46-23)
- Freshwater Wetlands Act, Department of Environmental Management (RIGL § 46-23-6)
- Minimum Standards Related to Individual Sewage Disposal Systems, Department of Environmental Management (RIGL § 46-12)

Any variances from the provisions and requirements of the above referenced State regulations may only be granted in accordance with the required variance procedures of these State regulations.

B.) All new and replacement water supply systems proposed for installation in a Special Flood Hazard Area are to be designed to minimize or eliminate infiltration of flood waters into the systems.

C.) All new and replacement waste water treatment systems proposed for installation in a Special Flood Hazard Area are to be designed to minimize or eliminate infiltration of flood waters into such systems and discharge from such systems into flood waters. New or replacement onsite waste water treatment systems are to be located to avoid impairment to them or contamination from them during flooding. The provisions of this paragraph are reviewed and administered by the Rhode Island Department of Environmental Management (RIDEM).

D.) All manufactured homes to be placed within a Special Flood Hazard Area shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of the Rhode Island Building Code. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

E.) In a riverine situation requiring any alteration or relocation of a watercourse, the carrying capacity of any altered or relocated watercourse shall be maintained. If the watercourse crosses municipal boundaries, the Portsmouth Building Official shall notify the adjacent community, as well as:

NFIP State Coordinator
Rhode Island Emergency Management Agency
645 New London Avenue
Cranston, RI 02920

NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

5. BASE FLOOD ELEVATION AND FLOODWAY DATA

A.) Floodway Data - In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

B.) Base Flood Elevations in A Zones - Where BFE data is available, the Building Official shall obtain and maintain records of the lowest floor elevation and height of flood proofing for all new and substantially improved construction.

C.) Base Flood Elevations in A Zones - In the absence of BFE data and floodway data, the best available Federal, State, local, or other BFE or floodway data shall be used as the basis for elevating residential and non-residential structures to or above the base flood level and for flood proofing non-residential structures to or above the base flood level.

D.) Base Flood Elevations in A Zones - BFE data is required for subdivision proposals or other developments greater than fifty (50) lots or 5 acres, whichever is the lesser.

6. USE REGULATIONS

Uses permitted by right or by Special Use Permit pursuant to Article V of this ordinance and located in Special Flood Hazard Areas (not including flood fringe lands) shall be subject to the following provisions:

A.) A AND AE ZONES:

1.) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

2.) All new construction and substantial improvements of residential structures within Zones A and AE shall have the lowest floor (including basement) elevated to or above the Base Flood Elevation.

3.) All new construction and substantial improvements of non-residential structures within Zones A and AE:

- a) shall have the lowest floor (including basement) elevated to or above the base flood level OR,
- b) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

4.) Where a non-residential structure is intended to be made watertight below the base flood level:

- a) a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of paragraph 7.C(2) above and,
- b) a record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are flood proofed shall be maintained with the Portsmouth Building Official.

5.) For all new construction and substantial improvements in the A and AE Zones, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or limited storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b) The bottom of all openings shall be no higher than one foot above grade.
- c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

6.) All manufactured homes that are placed or substantially improved upon within Zones A and AE on sites:

- a) outside of a manufactured home park or subdivision,
- b) in a new manufactured home park or subdivision,
- c) in an expansion to an existing manufactured home park or subdivision, or
- d) in an existing manufactured home park or subdivision in which a manufactured home has incurred substantial damage as the result of a flood,

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood

elevation and is securely anchored to an adequately anchored foundation system to resist floatation collapse and lateral movement.

7.) All manufactured homes to be placed or substantially improved upon in an existing manufactured home park or subdivision within Zones A and AE that are not subject to the provisions of paragraph 6.A(6) above shall be elevated so that either:

a) The lowest floor of the manufactured home is at or above the Base Flood Elevation, OR,

b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

B.) V and VE Zones (Coastal High Hazard Areas):

1.) All new construction and substantial improvements in within Zones V and VE shall be elevated on pilings and columns so that:

a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level, and,

b) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this section.

2.) All new construction and substantial improvements within Zones V and VE shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a break-way wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot.

Use of break-way walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

a) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,

b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.

Such enclosed space shall be useable solely for parking of vehicles, building access, or limited storage.

3.) For all new construction and substantial improvements within Zones V and VE, the Portsmouth Building Official shall obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns), determine whether or not such structures contain a basement, and maintain a record of all such information.

4.) All new construction and substantial improvements within Zones V and VE shall be located landward of the reach of mean high tide.

5.) The use of fill for structural support of buildings is prohibited within all V and VE Zones.

6.) The man-made alteration of sand dunes and mangrove stands is prohibited within all V and VE Zones.

7.) All manufactured homes that are placed or substantially improved upon within Zones A and AE on sites:

- a) outside of a manufactured home park or subdivision,
- b) in a new manufactured home park or subdivision,
- c) in an expansion to an existing manufactured home park or subdivision, or
- d) in an existing manufactured home park or subdivision in which a manufactured home has incurred substantial damage as the result of a flood,

shall meet the standards of paragraphs 6.B(1) through (6) of this section.

8.) All manufactured homes to be placed or substantially improved upon in an existing manufactured home park or subdivision within Zones V and VE that are not subject to the provisions of paragraph 6.B(7) shall meet the standards of paragraph 6.A(7).

7. RECREATIONAL VEHICLES

All recreational vehicles placed on sites within Special Flood Hazard Areas shall meet one of the following requirements:

- 1) be on the site for fewer than 180 consecutive days,
- 2) be fully licensed and ready for highway use,
- 3) meet the elevation and anchoring requirements for manufactured homes in paragraph 4.D.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions

8. ADDITIONAL CONDITIONS

For the following uses, additional reasonable conditions dealing solely with flood protection measures may be imposed by the Building Official. Likewise, the Zoning Board of Review may impose similar restrictions as additional conditions in the issuance of a Special Use Permit for the following uses:

RESIDENTIAL USES

- a) Apartment House
- b) Hotel, Motel, Motor Court, Tourist Home, Rooming House
- c) Manufactured Home Park or Subdivision
- d) Recreation Buildings & Structures (for private use)
- e) Private Garage
- f) Buildings for Customary Home Occupations
- g) Other Accessory Buildings

PUBLIC, SEMI-PUBLIC AND INSTITUTIONAL USES

- a) Hospitals (other than animals), Sanitaria & Nursing Homes
- b) School (offering standard courses)
- c) Nursery School, Kindergarten
- d) Public Utilities
- e) Public Water Facilities

AGRICULTURAL USES

- a) Accessory Buildings

COMMERCIAL AND INDUSTRIAL USES

- a) Banks
- b) Golf Courses, Country Club, Marina
- c) Auction Barns
- d) Open Air Display Lots, Commercial Parking Lots
- e) Storage Warehouses
- f) Lumber, Fuel and Ice Establishments
- g) Research Facilities
- h) Light Industry
- i) Light Manufacturing
- j) Industrial Establishments
- k) Other Industrial Establishments
- l) Gravel Pits, Earth Removal

9. STORAGE OF BULK MATERIALS

No material shall be stored in Special Flood Hazard Areas or in the flood fringe area which is likely to cause an obstruction, create a fire hazard or pollute the water during flood periods. Such materials includes but is

not limited to substantial quantities of lumber and other floatable materials, volatile materials, acids, poisons, liquids other than water and soluble materials.

10. DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable but does not imply total flood protection.

11. SEVERABILITY

If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.

12. VARIANCE PROCEDURES

Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result. The Building Official shall notify the applicant, in writing, that (1) the issuance of a variance to construct a structure below the base flood level will result in increase premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions, including justification of their issuance. All such variances issued shall be reported in the Town's Annual Report to the Federal Insurance Administrator.

13. DEFINITIONS

Words and phrases defined herein pertain to flood plain management and are for the purposes of Article III, Section F of this ordinance only.

ACCESSORY STRUCTURE - A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

BASE FLOOD - The flood having a one (1) percent chance of being equaled or exceeded in any given year, also referred to as the one hundred (100) year flood, as published by the Federal Emergency Management Agency (FEMA) as part of a Flood Insurance Study (FIS) and depicted on a Flood Insurance Rate Map (FIRM).

BASE FLOOD ELEVATION (BFE) - The elevation of the crest of the base flood or 100-year flood. The height, as established in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum where specified), in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

COASTAL HIGH HAZARD AREA - The area subject to velocity hazard (wave action) designated on a FIRM as Zone V or VE.

DEVELOPMENT - Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings or structures; the construction of additions, alterations or substantial improvements to buildings or structures; the placement of buildings or structures; mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment; the storage, deposition, or extraction of materials;

and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION - A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured home are to be affixed (including, as a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR EXISTING MANUFACTURED HOME SUBDIVISION - The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) - The federal agency that administers the National Flood Insurance Program (NFIP).

FLOOD INSURANCE RATE MAP (FIRM) - The official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas (100-year floodplain) and the insurance risk premium zones applicable to a community.

FLOOD INSURANCE STUDY (FIS) - The official study of a community in which the Federal Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and determination of local flood hazards, flood profiles and water surface elevations. The Flood Insurance Rate Maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood elevations, and may provide the regulatory floodway limits.

FLOOD PLAIN - The continuous area bounding a water body or water course, the elevation of which is equal to or lower than the base flood elevation; also, any isolated land of higher elevation with a total area less than the district's minimum residential lot size.

FLOOD FRINGE LANDS - The continuous land area adjacent to and higher than Special Flood Hazard Areas, the elevation of which is no greater than one (1) foot above the adjacent base flood elevation, and for purposes of the flood provisions within this Zoning Ordinance shall be subject only to provisions dealing with storage of bulk materials in flood fringe lands.

FLOOD PROOFING - Any combination of structural and non-structural 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 - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

LOWEST FLOOR - The lowest floor of the lowest enclosed area (including basement) but excluding any unfinished or flood resistant enclosure that is usable solely for parking of vehicles, building access or limited storage in an area other than a basement, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

MANUFACTURED HOME - A structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term also includes park trailers, travel trailers, recreational vehicles and other similar vehicles or transportable structures placed on a site for one hundred and eighty (180) consecutive days or longer and intended to be improved property.

MANUFACTURED HOME PARK OR SUBDIVISION - A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

MARKET VALUE - Market value is the price of a structure that a willing buyer and seller agree upon. This can be determined by an independent appraisal by a professional appraiser; the property's tax assessment, minus land value; the replacement cost minus depreciation of the structure; the structure's Actual Cash Value.

NEW CONSTRUCTION - Structures for which the "Start of Construction" (see below) commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION - A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain regulations adopted by the community.

RECREATIONAL VEHICLE - A vehicle which is: (a) built on a single chassis; (b) four hundred (400) square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

SPECIAL FLOOD HAZARD AREA (SFHA) - The land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. SFHAs are determined utilizing the base flood elevations (BFE) provided on the flood profiles in the Flood Insurance Study (FIS) for a community. BFEs provided on Flood Insurance Rate Map (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location. SFHAs include, but are not necessarily limited to, the land shown as Zones A, AE, and the Coastal High Hazard Areas shown as Zones V and VE on a FIRM. The SFHA is also called the Area of Special Flood Hazard.

START OF CONSTRUCTION - For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, substantial improvement or other improvement was within one hundred and eighty (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 a basement, footings, piers, or foundations or the erections 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 construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE - A walled and roofed building which is principally above ground, including a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

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

SUBSTANTIAL IMPROVEMENT - any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either, a) before the improvement or repair is started, or b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either 1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or 2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE - A grant of relief by a community from the terms of the floodplain management ordinance that allows construction in a manner otherwise prohibited and where specific enforcement would result in unnecessary hardship.

VIOLATION - Failure of a structure or other development to be fully complaint with the community's floodplain management ordinance. A structure or other development without required permits, lowest floor elevation documentation, flood-proofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

1. Traffic Sensitive Districts are established for the following purposes:
 - m. To facilitate the movement of traffic along major roads in Portsmouth in a safe and orderly manner;
 - n. To reduce the number of and increase the spacing of driveways which may disrupt traffic flow;
 - o. To reduce infringement on the rights of the public to travel roadways in a safe manner, while at the same time providing for adequate access and egress to properties; and
 - p. To protect the public safety along major thoroughfares in the Town where accidents have frequently occurred.

2. All driveways opening onto streets listed in Subparagraph 5 of this Section shall have suitable turnaround space so that automobiles do not back out into said streets.

3. On any lot with frontage on the streets listed in Subparagraph 5 of this Section the following shall apply:
 - a) Only one driveway or curb opening onto streets listed in Subparagraph 5 of this Section shall be created to serve the original lot; or
 - b) Future subdivision or lots created from the original lot shall be served by a single common driveway or curb opening onto the streets listed in Subparagraph 5 of this Section; or
 - c) A public street or street system approved by the Planning Board under the provisions of the Rules and Regulations Regarding the Subdivision of Land shall be created to serve all subsequent lots created from the original lot.

4. Common driveways, rights-of-way or other common means of access to adjacent streets listed in Subparagraph 5 of this Section shall be reviewed and approved by the Planning Board or Zoning Board of Review before any building permit shall be issued for lots created from the original lot.

5. This Section shall be applicable only to lots having frontage on the following streets²⁵:
 - a) East Main Road (Route 138)
 - b) West Main Road (Route 114)
 - c) Bristol Ferry Road (Route 114)
 - d) Turnpike Avenue
 - e) Union Street
 - f) Middle Road
 - g) Sandy Point Avenue
 - h) Wapping Road
 - i) Glen Road
 - j) Boyd's Lane
 - k) Braman's Lane
 - l) Stringham Road²⁶
 - m) Burma Road

Plat 66, Lot 4 as presently constituted is exempt (see footnotes).

Section H. WATERSHED PROTECTION DISTRICT ²⁷**1. PURPOSE**

The provisions herein governing the development and use of land in the Watershed Protection District, as defined in Subsection H.3. below, shall be minimum provisions, and shall be superimposed on the underlying zoning districts or parts of districts, and impose specified requirements in addition to, but not less than, those otherwise applicable for the underlying district, and shall consider any watershed protection management programs in neighboring areas. These provisions are established for the following purposes:

- a) To protect, preserve and maintain the quality and quantity of drinking water supplies which are of substantial value as a public drinking water supply upon which the residents of the Town of Portsmouth and others depend by regulating the use and development of land adjoining water courses and/or primary water recharge areas;
- b) To regulate or prevent uses of land within the Watershed Protection District having the potential to adversely affect the quality or quantity of the drinking water of the Town;
- c) To locate all construction, land disturbance and drainage facilities at a maximum possible distance from drinking water reservoirs and their tributaries.
- d) The Portsmouth Comprehensive Plan requires protective measures to ensure that our drinking water is plentiful and of the highest quality.
- e) To protect the health, safety and general welfare of the public.

It is intended that this section be interpreted in view of the paramount public interest involved in the protection of critical drinking water supplies.

2. OTHER REGULATIONS TO APPLY

Except for the provisions of this section as they apply to the Watershed Protection District and in which such land is located, all other provisions of this Ordinance shall continue in full force and effect. Where there is a conflict between these provisions and those of the Portsmouth Land Development and Subdivision Regulations, these provisions shall prevail.

3. DESIGNATION OF WATERSHED PROTECTION DISTRICT

The Watershed Protection District is that land area, the surface water and ground water from which have a direct or indirect effect on the quality of water in the primary water bodies of the watershed. The Watershed Protection District is defined as approximately that area bounded by Mill Lane on the north, thence proceeding south on Middle Road to its terminus on Union Street, thence proceeding east to East Main Road, thence proceeding south on East Main Road to the Middletown Town Line, thence proceeding west along the town line to Jepson Lane, thence proceeding north along Jepson Lane to its terminus at Union Street, thence proceeding west on Union Street to its terminus at West Main Road, thence proceeding north to its intersection of Mill Lane.

- a) Map III-1, which is derived from the "Water Quality Protection Plan for the City of Newport, December 1989", shall be used for determining inclusion in or exclusion from the Watershed Protection District, and

shall supersede the written description above. The Zoning Officer shall determine from Map III-1 and on-site surface topography the location of a parcel or portion thereof in the Watershed Protection District.

b) Where the bounds of the Watershed Protection District are in doubt or in dispute, the burden of proof shall be upon the owners of the land in question to show where such bounds should properly be located. At the request of the landowner(s), the Town may engage a professional surveyor, hydrologist or soil scientist to determine more accurately the location and extent of the Watershed area and may charge the owner(s) for all or part of the cost of the investigation.

4. DESIGNATION OF HYDROLOGICAL ZONES WITHIN THE WATERSHED PROTECTION DISTRICT

The Watershed Protection District is composed of two subzones with differing permitted uses and other regulations, as approximated on Map III-2 herein. The reservoir/adjacent recharge zone "A" zone, and an upland drainage area or "UD" zone.

a) "A" ZONE

The area close to the surface reservoir which is critical to the protection of surface and subsurface water supplies, and requires a high degree of protection from incompatible land uses.

- (1) Within five hundred feet (500') from the edge of Lawton Valley Reservoir, St. Mary's Pond or Sisson Pond as determined by the methodology specified in the R.I. Freshwater Wetlands Act, and as certified by a professional engineer; and
- (2) Areas of Stissing silt loam and Mansfield mucky silt loam (U.S. Soil Natural Resource Conservation Service "Se and Ma" soil types), as designated on the Soil Survey of Rhode Island 1981, as amended, the maps and definitions of which are hereby incorporated by reference to this Ordinance, as designated on the Watershed Protection District Map III-2, the locations of which may be confirmed by a soil scientist at the applicant's expense; and/or
- (3) All streams, wetlands and their buffers that are determined by RIDEM application procedures to be tributaries to a drinking water reservoir, as defined in subparagraph 4c) below. Notwithstanding subparagraph (2) above, wetland delineation, as defined by RIDEM regulations, shall be used to determine the exact bounds of the "A" zone within a parcel beyond the area designated in subparagraph (1) above.

b) "UD" ZONE

The watershed area designated which is contributory to surface water runoff to the primary water bodies either through surface water runoff or groundwater movement that is not in the "A" Zone.

c) The word "reservoir" shall be defined as Lawton Valley Reservoir, St. Mary's Pond, Sisson Pond, and Bailey's Brook.

d) Notwithstanding the provisions of Article III, Section D.1, where a lot is partially in the Watershed Protection District, that portion in the Watershed Protection District shall adhere to all requirements of this Section. Where a lot is partially in Zone "A" of the Watershed Protection District and partially in Zone "UD", the requirements of each zone shall be applied to that portion in the respective districts.

5. PERMITTED USES IN ZONE "A"

The following are the only uses permitted in Zone A, regardless of uses allowed in the underlying zoning district. (There shall not be a listing of permitted uses in this district in the Use Tables in Article V.):

- a) Conservation and management of soil, water, natural and wooded open areas and wildlife.
- b) Public water lines and related facilities.
- c) Public or private parks.
- d) Single family houses and uses and improvements customarily accessory thereto.
- e) Agriculture and outdoor recreation areas not including structures or impermeable surfaces, provided there are vegetated buffers around the primary impoundments that comprise the reservoirs.
- f) Historic Monuments.

6. PROHIBITED USES IN ZONE "UD"

Any use permitted in the underlying zoning district by right or by special exception is permitted as such, except for the following, which are expressly prohibited. (There shall not be a listing of permitted uses in this district in the Use Tables in Article V.)

- a) Outdoor storage of junk or salvage materials.
- b) Outdoor or underground storage of flammable, explosive or hazardous material as defined by RIDEM regulations, including petroleum, except as provided in subparagraph 6.i) below.
- c) Sewage treatment plant.
- d) Incinerator.
- e) Sanitary landfill.
- f) Solid waste transfer station.
- g) Vehicle washing establishment.
- h) Uses which discharge wastewater other than surface water into other than an approved sewage disposal system.
- i) Accessory uses to any principal use which involves any of the following practices:
 - (1) Storage or disposal of hazardous waste (including petroleum) as defined by Rules and Regulations for Hazardous Waste RI DEM 7/18/84, as amended;
 - (2) Placement of an ISDS within 200 feet of the surface water of a reservoir;
 - (3) Any underground storage of liquid fuel.
 - (4) Any above ground storage of liquid fuel in excess of 300 gallons for any residential use, except uses by public utilities subject to the provisions of RIDEM Oil Pollution Control Regulations. Above ground storage of liquid fuel in excess of 300 gallons for non-residential uses may be permitted provided that said storage is placed at a maximum feasible distance from the reservoirs and their tributaries, and that construction, containment and maintenance be in accordance with RIDEM Oil Pollution Control Regulations.

7. PROHIBITED USES IN WATERSHED PROTECTION DISTRICT

The following uses are designated as a "Severe Threat to Water Quality" and are expressly prohibited from the Watershed Protection District:

- a) Any use that would generate a wastewater discharge other than domestic sewage, including but not limited to:
 - (1) Photo processors.
 - (2) Furniture strippers.
 - (3) Laboratories.
 - (4) Dry cleaners.
 - (5) Laundromats.
- b) Any use, storage or processing of a hazardous material, including but not limited to:
 - (1) Gas stations.
 - (2) Landfills.
 - (3) Oil distributors.
 - (4) Printers.
 - (5) Fertilizer, pesticide, or herbicide warehouse or storage, except storage conducted in accordance with the R.I. Pesticide Control Act, if applicable, or as permitted and regulated under the R.I. Pesticide Control Act or the R.I. Right to Farm Act.
 - (6) Auto body and auto repair shops.
- c) A pre-existing nonconforming use or accessory use or a use previously permitted by Special Use Permit may be expanded by Special Use Permit if both the planned expansion and the prior use or accessory use meet the applicable State regulations on storage and use of hazardous materials, and both prior and planned storage of hazardous materials are not within 300 feet from the surface water of a reservoir or 200 feet from a tributary thereto, and an adequate enclosed containment system is provided.

8. LAND USE CLASSIFICATION FOR USES NOT LISTED IN SUBSECTIONS 5, 6 OR 7

Because this ordinance cannot anticipate every type of proposed use, other land uses within the Watershed Protection District are categorized by potential effects on water quality. For each of these proposed uses, the Zoning Board of Review shall determine the appropriate use classification. The Zoning Board of Review may require a set of mandatory protective measures (conditions) as part of any building or development permit according to the Use Classifications set forth below.

The following categories, ranging from least to the most severe threat to water quality, apply:

- a) Class 1 -- No Risk
Including but not limited to: Open space, passive recreation.
- b) Class 2 -- Slight Risk
This category provides a substantial economic use to a landowner without posing a major risk to drinking supplies.
Including but not limited to: Crops utilizing minimal amounts of fertilizers and pesticides including permanent pasture, hay crops and turf, low density residential (2 or more gross acres per dwelling unit), utility lines, and developed recreation.
- c) Class 3 -- Moderate Risk
These uses require regulatory oversight and strict adherence to applicable mitigative measures to prevent contamination problems. Agricultural activities require application of an approved conservation plan and best management practices.

Including but not limited to: Agricultural production including livestock, nurseries and orchards, corn, fruit and vegetables, medium density residential (1/4 to 2 gross acres per dwelling unit), and commercial uses provided that total impervious surface is less than or equal to 25% of total lot area.

d) Class 4 -- Higher Risk

Threat of spills, leaks, or unauthorized discharge of domestic wastewater or hazardous materials from these land uses. Permitted with caution and with substantial mitigative measures.

Including but not limited to: Institutional, high density residential (less than 1/4 gross acre per dwelling unit), sand and gravel mining, appliance repair, commercial uses provided that no dimensional variance for total lot coverage per the provisions of Article VII., Section G. shall be permitted. Light industrial uses which do not require discharge of other than domestic wastewater, provided that no dimensional variance for lot coverage per the provisions of Article IV., Section B. shall be permitted. Uses which generate considerable wastewater and/or may utilize toxic or hazardous substances including, schools, hospitals, medical offices and nursing homes, motels/hotels, and car washes.

e) Class 5 -- Severe Threat to Water Quality

Uses which employ hazardous chemicals including but not limited to photo processors, furniture strippers, laboratories, printers, dry cleaners and laundromats, gas stations, oil distributors, auto body, underground fuel storage tanks, toxic chemical storage, except as provided under subparagraphs 6.i) and 7.c) above, and commercial uses with impervious surface in excess of 70% of a lot are not permitted in the watershed protection area.

9. MANDATORY DEVELOPMENT RESTRICTIONS

a) Stormwater Drainage

For any subdivision adding or extending a street, discharge (including discharge via a stormwater basin) of stormwater into streams and wetlands that are determined by RIDEM application procedures to be tributaries to a drinking water reservoir, as defined in subparagraph 4c) herein, will not be permitted unless the applicant can provide adequate scientific and technical documentation and engineering plans which prove, to the satisfaction of the Town, that specific pollution controls and/or other mitigation measures and BMPs will completely eliminate any measurable impact to water quality. Said plans and documentation will become conditions of approval. The burden of proof rests on the applicant.

(1)Unless specified herein, all drainage facilities shall be designed and installed in accordance with Article X. of the Portsmouth Land Development and Subdivision Regulations.

(2)Calculations shall include estimated runoff from rooftops and driveways.

(3)A maintenance plan for each stormwater basin shall be filed.

(4) To the maximum extent practicable, stormwater shall be diverted to one or more grass swales and other natural upland treatment facilities, rather than detention ponds located at the bottom of a hill. To the maximum extent practicable, stormwater shall be retained and allowed to infiltrate the soil on-site, rather than be discharged from the site.

(5) Storm water from the entire site shall be designed to remove 80% of total suspended solids. Storm water basins shall be designed in accordance with the RI Stormwater Design and Installation Standards Manual, and shall comply with Article X. of the Portsmouth Land Development and Subdivision Regulations.

(6) A maintenance guarantee, as provided in Article X. of the Portsmouth Land Development and Subdivision Regulations, shall be provided.

b) Septic Systems Regulations

(1) Septic systems, including all leaching fields and other parts of a septic system, shall not be allowed within 200 feet of any water body or any stream or wetland that is determined by RIDEM application procedures to be tributary to a drinking water reservoir.

(2) A reserve area for replacement systems is mandatory in the watershed district. Said reserve area shall be subject to the same requirements as the main septic system. (Dual alternating leach fields, where the idle one is allowed to clean itself out over time, are encouraged.)

(3) Innovative/Alternative technology septic systems, as approved by RIDEM, which have been shown to greatly reduce nitrogen, pathogens, BOD and TSS, shall be used in all new construction within the "A" zone. Such systems must have pressurized distribution to leach fields.

(4) All septic tanks installed after the effective date of this ordinance shall be certified watertight in accordance with ASTM standards, and guaranteed as such by the manufacturer.

(5) Galley systems are prohibited.

c) Sub-Drains on Lots: Installation of conduits such as tile, pipe, or tubing beneath the ground surface on a lot to divert ground water, to intercept or prevent water movement into a wet area, to relieve artesian pressure, to remove surface runoff, to serve as an outlet for other drains, or to replace natural subsurface drainage patterns that are interrupted or discontinued due to construction operations are prohibited if the individual and/or collective purpose is to obtain a septic system. Sub-drains are permitted in accordance with Article X. of the Portsmouth Land Development and Subdivision Regulations for other purposes, provided they are located at least 20 feet from any portion of the septic system.

(1) Location and Placement of Developed Areas

All development shall be situated as far from the reservoirs, tributaries, wetlands as reasonably possible. The Town shall consider soils and topography in making such decisions.

(2) At least 50% of each parcel within 300 feet of the surface water of a reservoir shall remain undisturbed.

10. MANDATORY SITE DESIGN STANDARDS

Environmentally sensitive site design standards (best management practices) are required for all permitted uses, whether by special use permit or otherwise, in the Watershed Protection District. These standards are developed to optimize water quality, as opposed to technical "make do" compliance.

The following measures shall be required, as applicable and feasible, in the best interests of protecting water quality:

a) Vegetated buffers must be maintained or planted around all critical environmental areas, including reservoirs, and their tributaries. Vegetated buffers 95 feet in width shall be composed of the following:

(1) A strip of land fifteen (15) feet wide starting at the edge of the pond or stream bank, which shall be comprised of mature trees and shrubs that are to remain undisturbed. Outflow from subsurface drains must not be allowed to enter or pass through this area

(2) Next to the 15 foot strip, a strip of land at least sixty (60) feet wide, which shall be comprised of trees and shrubs that may be managed as necessary. Outflow from subsurface drains must not be allowed to enter or pass through this area.

(3) Thence a strip of land at least twenty (20) feet wide, which shall be comprised of the devices designed to convert concentrated overland or piped flow to uniform shallow sheet flow.

(4) Specifications for these buffers shall be according to a publication entitled "Riparian Forest Buffers", U.S. Department of Agriculture, 1991. Trees and shrubs employed shall be selected based on a publication entitled "Sustainable Trees and Shrubs for Southern New England", University of Rhode Island, 1995.

b) Surface water runoff shall be directed toward areas covered with vegetation for surface infiltration.

c) Surface water runoff shall be directed toward the lesser restricted district where the property is located within two or more districts, as feasible.

d) Parking lot controls, including pervious surfaces and drainage facilities shall be employed.

e) Buildings and impervious surfaces shall be set back at least 150 feet from the inland edge of the reservoirs and their tributaries.

f) Minimize tree removal: Applicant must demonstrate why each area must be cleared. Priority shall be given to maintaining established trees. Existing natural buffers, as in 10.a) above, shall be maintained.

g) All grading, filling, excavation, tilling, or chemical use shall be set back at least 100 feet (or RIDEM regulations, whichever is greater, or per the R.I. Right to Farm Act if applicable) from the inland edge of the reservoirs and their tributaries.

h) Areas to be disturbed within 300 feet of any water body or wetland shall be clearly marked on approved plans. On site, prior to any construction activity, the areas to be disturbed shall be clearly delineated with stakes and ropes, or other appropriate material, and the downhill border of said area lined with staked hay bales in accordance with the Portsmouth Soil Erosion and Sedimentation Ordinance.

11. DESIGN PRINCIPLES

The following design principals shall be employed for all developments in the Watershed Protection District:

a) Addressing Development Constraints with Respect to Site Features.

- (1) Avoid slopes greater than 15%.
- (2) Minimize impacts to groundwater.
- (3) Recognize soil limitations.
- (4) Avoid wetlands.

b) 'Sustainable Development' Principles

- (1) Design with topography and natural features.
- (2) Creative preservation of open space.
- (3) Compatibility with surrounding land uses.

c) Employing 'Mesi-scaping' Principles

- (1) Plant or preserve native vegetation to minimize need for irrigation and use of chemical additives.

d) Use of Vegetative Buffers

- (1) Create or restore vegetative buffers for non-point source pollution control and wildlife habitat.
- (2) Link with existing buffer areas to protect stream and river corridors.

e) Orienting Layout to Minimize Pollutant Loading

- (1) Minimize roadways; locate roads to reduce de-icing requirements.
- (2) Consider alternative ISDS/treatment systems, as approved by RIDEM.

12. DEVELOPMENT PLAN REVIEW

a) All proposed construction and development in the watershed, with the exception of individual single family houses and accessory uses, shall be referred to the Planning Board and shall undergo formal development plan review, per the above standards, and per the provisions of Article XI. Development Plan Review herein. Development of a single family house on a pre-existing lot shall be referred the Zoning Officer.

b) Environmental Review Assessment

- (1) a development requiring the construction of a street;
- (2) a development requiring a storm water treatment pond; or
- (3) a nonresidential development.

c) The Environmental Review Assessment shall contain appropriate supporting data on stormwater runoff and pollutant loading, setting forth the probable impact or effect of the proposed development on the water supply of the Town. In compiling such statement, the applicant

shall consult with regional agencies having knowledge and authority in water quality protection, including but not limited to the Newport Water Department and the R.I. Dept. of Environmental Management, both of which shall receive notice of proposed development per the requirements of Article XIII Section C.2)b). The Environmental Review Assessment shall cover at least the subject areas listed herein for evaluation and conformance with pertinent local, state and federal performance standards.

d) The Environmental Review Assessment shall also contain a description of the existing environmental setting to include all manmade, natural and physiographic features within 500 feet of the property line including but not limited to wetlands or water bodies, topographic contours, vegetation and existing development.

e) Construction of one single family house on a lot conforming to the minimum lot size and other provisions herein shall not be required to submit an Environmental Review Assessment.

Section I. WATER RESOURCE PROTECTION DISTRICT, WRPD ²⁸

1. PURPOSE

The purpose of this district is to ensure that new construction does not result in an undue burden on the resources of public water systems within the district by ensuring that all new construction not approved for connection to the public water system has an independent supply of potable water. The water resource protection district is an overlay district which imposes specified requirements in addition to those otherwise applicable for the underlying zone.

2. USES - Any uses permitted by right or special use permit in the underlying zone are likewise permitted as such in the WRPD.

3. INTENSITY REGULATIONS - land space regulations, density and intensity regulations shall be the same as are applicable in the underlying district.

4. SPECIAL REGULATIONS - no building permit shall be issued for the establishment of a new dwelling unit, either by new construction or conversion of an existing structure unless the applicant produces:

- a) Proof of water availability by connection to the public water system, or
- b) A certificate attesting that an individual water source (such as a drilled well, driven well, dug well, desalinization facility, etc.) has been established on the property, which is capable of providing potable water in the amounts and pressures required by the RI State Building Code. Such water source shall be established and tested to the satisfaction of the Building Official and compliance with all federal, state and local regulations shall be met prior to issuance of the building permit.

5. DESIGNATION OF DISTRICT - the WRPD shall consist of all land on Portsmouth Tax Assessor's Maps 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 and 87.

Section J. MULTI-FAMILY INCENTIVE DISTRICT ²⁹

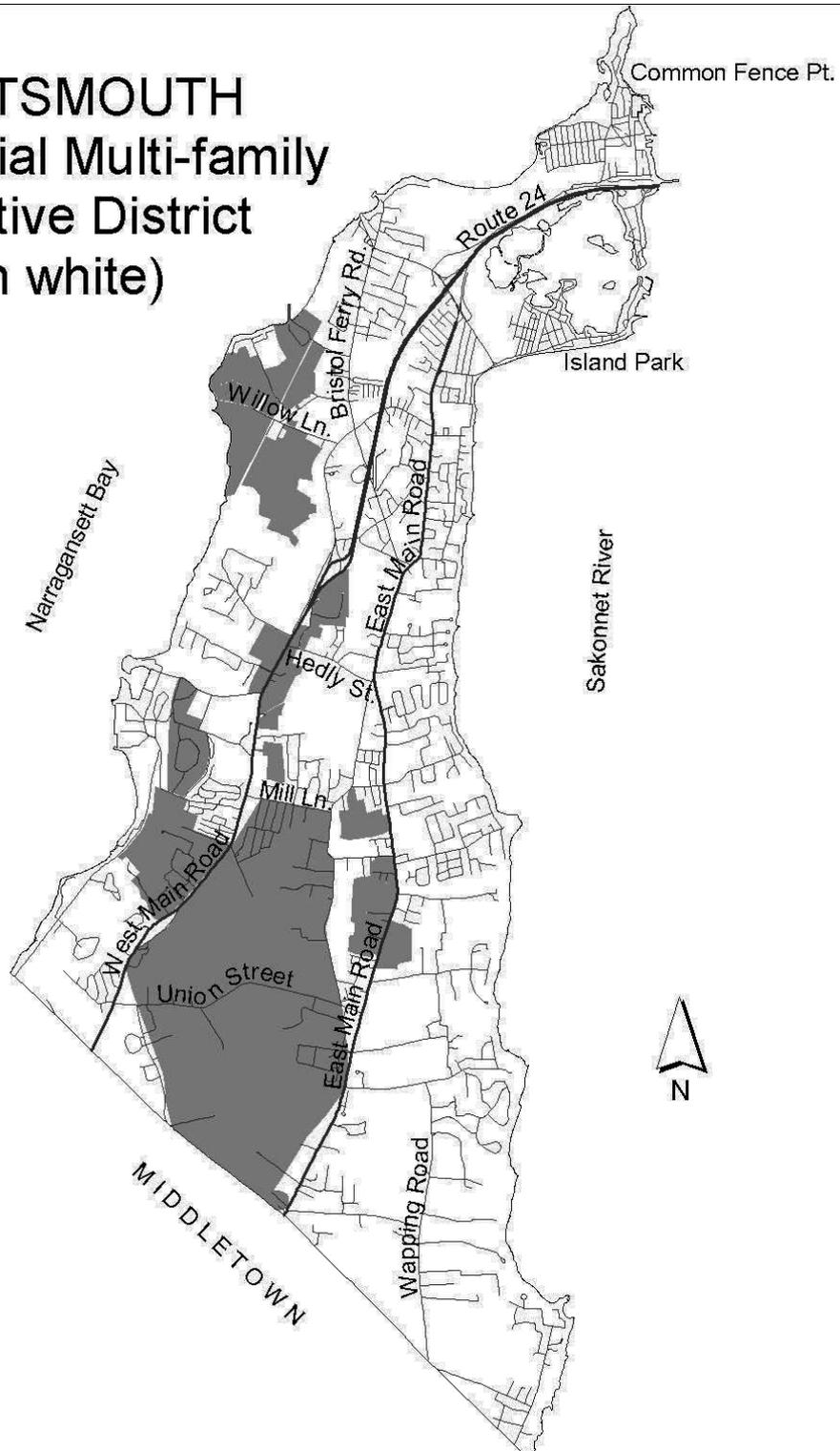
1. PURPOSE

The purpose of this district is to encourage the development of affordable and low-and-moderate income housing, as defined in Article II., in which density of development may exceed that of conventional multi-family

development. This is an overlay district which imposes specified requirements and development bonuses as an alternative to those otherwise applicable for the underlying zone.

2. USES - Multifamily Housing in which at least 25% of the units are "Low or moderate income housing", as defined in Article II. Other uses permitted in the underlying zones are contained in Article V.
3. INTENSITY and DEVELOPMENT REGULATIONS - For Multifamily Housing are contained in Article XIX, Section F. Other uses permitted in the underlying zones shall adhere to regulations for those types of uses as stipulated elsewhere in this ordinance.
4. DESIGNATION OF DISTRICT - The Multifamily Incentive District shall consist of all land as shown in the map, attached hereto, entitled "Incentive Zone for Residential Multi-Family Development". It consists of all parcels in Town except those in Heavy and Light Industry zones and the Watershed Protection Overlay District.

PORTSMOUTH Residential Multi-family Incentive District (in white)



Section K REDEVELOPMENT DISTRICT ³⁰1. PURPOSE

The purpose of this district is to ensure that development that takes place in the Redevelopment District according to the goals set out in the West Side Element of the Comprehensive Plan.

- a) The Redevelopment District is hereby defined as Map 43 Lot 1L, now or formerly known as Navy Tank Farms 1 and 2, and any subdivisions thereof.

2. PERMITTED USES

- a) Uses in the Redevelopment District are limited to the following categories of Planned Unit Developments, which are further defined in Article VIII:

(1) Planned Corporate Development

(2) Planned Marine Trade Development

(3) Planned Retail/Service Development

- (i) A Planned Retail/Service Development within the Redevelopment District may include multi-family housing per the provisions of Article VIII., provided that at least 10% of said units are "Low and Moderate Income", as defined in Article II.

- (ii) Density of such multi-family housing shall be per the provisions of Article XIX., which provides a density bonus that shall be counted as a municipal subsidy for low-moderate income housing.

(4) Any combination thereof.

3. INTENSITY REGULATIONS

Land space regulations, density and intensity regulations shall be the same as are applicable for the type of Planned Unit Development proposed.

4. PROCEDURES

Procedures to be followed for the consideration of Planned Unit Development proposals are contained in Article VIII. Section D. herein (Land Development Projects).

5. OTHER REGULATIONS TO APPLY

Except for the provisions of this section as they apply to the Redevelopment District and in which such land is located, all other provisions of this Ordinance shall continue in full force and effect. Where there is a conflict between these provisions and those of the Portsmouth Land Development and Subdivision Regulations, these provisions shall prevail.

FOOTNOTES AND SPECIAL CONDITIONS:

¹ Adopted October 27, 2004.

² Technical Amendment August 1996 to correct errors:
Portions of lots in Maps 51, 56, 60, 61 and 63 are in R-60 zone within 500 feet surrounding St. Mary's Pond, Sisson Pond and Lawton Valley Reservoir, measured landward from the high water line, not in Open Space District, as follows:

MAP 51

LOTS: 53, 55, 55A

Map 56

LOTS: 4, 5, 6, 12, 12A, 12B, 14, 15, 16, 17, 18, 30.

MAP 60

LOTS: 10, 11, 13, 14, 14A, 16, 17, 20, 22, 22A, 23, 24, 25, 26, 27, 45, 46, 47.

MAP 61

LOTS: 1, 3, 5

MAP 63

LOT: 1

³ Technical Amendment August 1996 to correct errors:
No portion of Map 28 is in R-60 zone.

⁴ Map 50 Lot 3 added December 11, 2000.

⁵ Article III. Section B., paragraph 3 R-60 District Lots
That map 84, Lot 60, (Prudence Island) be rezoned from Open Space to R-20 with the requirement that no lots coming out of that lot be smaller than 47,000 square feet (three lots in all).
AMENDED: August 15, 1994

⁶ That Map 19, Lot 80 be rezoned from Residential-20 to Commercial (without restrictions). (The previously set conditions being: That the hours of operation would be from 8:00 a.m. to 5:00 p.m., Monday through Friday, that all boats will be delivered or taken from the premises during these business hours, that there will be appropriate screening that will not block the view of homes but will protect property rights, that there will be no repair shops and that the building will be used for storage and retail sale only.) (Could vary the conditions by going to the Zoning Board of Review.)

Also previously voted was to allow a business office and medical offices.
ADOPTED: August 15, 1994.

⁷ ARTICLE III, Section B, (4), "Commercial District Lots, Map 31" is amended by deleting Lot 29 there from. Effective September 9, 1997, Lot 29 on Map 31 be rezoned Residential-20 (from Commercial) subject to the following conditions: That the owners of said lot 29 shall maintain the existing chain link fence along the common boundary with lot 70 on Map 28; that the owners of lot 29 enhance the present vegetative buffer along said boundary with lot 70 so that it has a screening effect equal to a compact evergreen screen five feet deep and at least six feet in mature height and said enhanced buffer be maintained; that the owners of lot 29 install and maintain a compact evergreen screen, five feet deep, not less than six feet in mature height and no less than two and one-half feet in height at planting along the common boundary of lot 29 and lot 29-A. Adopted September 9, 1997.

⁸ Article III, Section B 4 amended November 10, 1999 by deleting lots 79, 80, 81 & 82 on Map 31 from Commercial District Lots and re-designating R-20..

⁹ Lot 7 added August 23, 2010.

¹⁰ Article III, Section B paragraph 4 Commercial lots - effective July 12, 2004, Lot 6 on Map 34 is zoned commercial with the following conditions:

1. The property will be sub-divided as shown on the plan submitted to the Town Council on July 12, 2004. (Town Clerk's Note: The Plan referred to was recorded in the Land Evidence Records on July 20, 2004, as Plan #862.)
2. Use of the premises to be limited to professional medical offices.
3. The size, location and design of the new building be in substantial accordance with the plans submitted to the Town Council on July 12, 2004, subject to any changes approved by the Portsmouth Zoning Board of Review.

¹¹ Article III, Section B paragraph 4 Commercial lots - effective November 9, 1999, Lot 29 on Map 41 is zoned commercial with the following conditions:

1. That all lighting be designed to illuminate only the subject property and be directed away from neighboring property.
2. That there be no construction or parking on the westerly forty (40) feet of the subject lot and said area be devoted solely to a landscape buffer.
3. That a compact evergreen screen, no less than six (6) feet in mature height, be planted and maintained:
 - a. along the entire westerly boundary, and
 - b. beginning with a point equidistant from East Main Road with the easterly point of any building and running westerly along the boundaries with lots 31 and 32 to the northwest corner of the subject lot.
4. That all work be performed within the building.
5. That the use be limited to retail sales and service, specifically excluding food or beverage service.
6. That the curb cut to East Main Road be abandoned and all access be from Crossings Court."

¹² Article III, Section B paragraph 4 Commercial lots - Lot 8 and the easterly most three hundred (300) feet of Lots 9, 10, 11 & 12 on Map 55 are zoned commercial with the following conditions:

1. That the property be limited to the following uses:
 - a. professional offices such as engineers, attorneys, financial planners, real estate and/or insurance agencies and the like;
 - b. day care facilities limited to serving the needs of employees of the site and neighboring assisted living facility;
 - c. offices and clinics for medical, dental, psychiatric or other health services for the examination or treatment of persons as out patient, including laboratories that are a part of such offices or clinics;
2. That the following uses are expressly prohibited: retail sale businesses; drive-in or drive-through facilities, whether attended or unattended; food or beverage service and/or restaurants whether or not intended for the use of the primary occupants of the building; wholesale businesses or storage businesses; business or financial offices or establishments other than allowed pursuant to paragraph 1a & c above; service businesses other than expressly allowed pursuant to paragraph 1a, b & c above; social clubs, lodges, libraries, schools or museums.
3. This amendment is conditioned upon the issuance of all final approvals by the State of Rhode Island Department of Transportation and any other appropriate agency to authorize the installation of a traffic signal at the entrance to West Main Road, (Route 114).
4. If the condition set forth in paragraph 3 above is satisfied, this amendment shall become effective upon the recordation in the Portsmouth Land Evidence records of a special use permit authorizing the establishment of a nursing home/assisted living facility on Tax Assessor's Map 55, Lot 13.

Adopted: December 15, 1999.

¹³ Map 77 lot 113 added March 28, 2011.

¹⁴ The following lots were re-zoned from "Commercial" to "Town Center - Commercial" on October 27, 2004:

MAP 33

LOTS: 37, 38, 39, 40

MAP 34

LOTS: 1, 2, 3, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104

MAP 35

LOTS: 13, 14, 15 (772' west of East Main Road), 17, 19, 20, 21, 22, 23, 24, 25, 26

MAP 36

LOTS: 7, 8, 9, 11, 12, 12A, 13, 14 (434' east of East Main Road) 15, 16, 17, 18, 19, 61*

¹⁵ Article III, Section B 4 is amended to add the following parcels to that section entitled: "LIGHT INDUSTRY DISTRICT LOTS" That portion of Lot 1 on Map 38 rezoned from Light Industry to R-20: Beginning at a point, which said point is the northwest corner of the portion of the parcel to be zoned R-20 and the intersection of the southerly side of Cory's Lane, then running southwesterly, along the northwesterly boundary line of said parcel, a distance of twelve hundred (1,200) feet more or less to the southwest corner of said parcel as a point for a corner; thence turning and running southeasterly, along the southwesterly boundary line of said parcel a distance of four hundred seventy-five (475) feet to a point for a corner; thence turning and running northeasterly in a straight line; parallel and four hundred seventy-five (475) feet southeasterly of the first course herein described a distance of twelve hundred (1,200) feet more or less to the southerly side of Cory's Lane to a point for a corner; thence turning and running northwesterly, bounded northeasterly by said Cory's Lane, four hundred seventy-five (475) feet to the point or place of beginning. Adopted March 20, 2006.

¹⁶ Article III, Section B 4 is amended to add the following parcels to that section entitled: "LIGHT INDUSTRY DISTRICT LOTS"

That portion of Lot 1 on Map 43 designated thereon as parcel L (from the eastern boundary to a line 600 feet easterly and parallel to the centerline of the railroad line).

That the certain map entitled: "Zoning Map, Portsmouth, Rhode Island, dated January 15, 1980" be amended to reflect said changes.

Adopted April 29, 2002.

¹⁷ Parcels Map 51, Lots 49, 51, 52 and 54 were removed from the Light Industrial zone May 7, 2008.

¹⁸ Map 57 lots 7A and 7B added March 22, 2000.

¹⁹ ARTICLE III, Section B (4), District Boundaries is amended to delete the following parcel of land from "Heavy Industry District Lots": Tax Map 16, Lot 40 (previously a portion of existing Lot 37);

Lot 40 on Tax Assessor's Map 16 is rezoned Residential-40, subject to the following conditions:

That the northerly portion of Lot 37, now known as Lot 40, on Tax Map 16 be zoned Residential-40 upon the following conditions:

- that a subdivision plan substantially in compliance with the plan reviewed by the Council be approved by the Portsmouth Planning Board and that said plan contain the following:
 - trees which form part of a canopy over Therien Road must be marked on said plan and not removed,
 - that all lots, including those having frontage on Therien Road, have access over a common drive from West Shore Road;
 - that lots fronting on Therien Road be subject to a 150 foot building setback restriction, (exclusive of sheds and fences), running parallel to Therien Road up to a point 125 feet from the easterly boundary of lot 40,

-
- that lots bordering lots 38 and 39 be subject to a 30 foot building setback restriction (exclusive of sheds and fences) along the northerly border of lot 38 and the easterly and northerly border of lot 39;
 - that the plat provide an easement for the owner of lot 39 to travel over and across an existing driveway on lot 37;
 - that the plat provide the owner of lot 33 an easement for parking purposes which could be screened with shrubbery if necessary;
 - that the matter of Riley Lamson v. Zoning Board of Review, M.P. 97-6 be dismissed.

Adopted: November 3, 1997

²⁰ Map 27, lots 24A and 24B added March 22, 2000.

²¹ Article III, Section B 4 is amended to add the following parcels to that section entitled "WATERFRONT DISTRICT LOTS"

1. that portion of Lot 1 on Tax Map 43 designated thereon as Parcel M.
2. that portion of Lot 1 on Map 43 designated thereon as Parcel L (from the centerline of the railroad line to a line 600 feet easterly of and parallel to the centerline of the railroad line).

Adopted April 29, 2002.

²² That Article III, Section 4 is amended to add the following parcels to that section entitled "OPEN SPACE AND PUBLIC LANDS DISTRICT LOTS":

1. All of Lot 1 on Map 43 south of Lawton Brook and all of lot 7 on Map 50 south of Lawton Brook's outfall to the Bay, (commonly known as tank farms 3 and 4 and adjacent coastal areas).

Adopted April 29, 2002.

²³ Redevelopment District adopted March 15, 2010.

²⁴ Amendments to completely revise Section F. to meet federal regulations were adopted March 22, 2010. The previous version is no longer contained within the zoning regulations.

²⁵ Article III, Section G. amended to add:

- g) Sandy Point Avenue
- h) Wapping Road
- i) Glen Road
- j) Boyd's Lane
- k) Braman's Lane

This amendment exempts Plat 66, Lot 4 as presently constituted.
This amendment shall take effect upon passage.

Adopted: June 5, 1995.

²⁶ Stringham Road and Burma Road (also known as Defense Highway) were added March 15, 2010.

²⁷ Adopted November 17, 1997.

²⁸ Section I adopted August 26, 2002.

²¹ Adopted May 24, 2004. - delete this line - it is actually footnote #31.

²⁹ This section adopted June 26, 2007.

ADD FOOTNOTE FOR MAP 38, LOT 1 FROM LIGHT INDUSTRIAL TO R-20 (2006-03-20)(footnote #15)

ADDED MAP 51, LOTS 4, 5, AND 12 TO COMMERCIAL DISTRICT LOTS (2008-02-11) (footnote #32)

REMOVE MAP 51, LOTS 49, 51, 52 AND 54 FROM LIGHT INDUSTRIAL (to Residential) (2008-05-07 B) (see footnote #17)

³⁰ Section K added March 15, 2010.

31 Adopted May 24, 2004 (from R20 to Commercial)

32 Adopted February 11, 2008 (from Residential to Commercial)

ARTICLE IV. DISTRICT INTENSITY REGULATIONS

Section A. LAND SPACE REQUIREMENTS - GENERAL

1. No building or structure shall be built nor shall any existing building or structure be enlarged or altered except in conformance with the regulations of this Zoning Ordinance as to lot coverage, lot area, area per dwelling unit, lot width, front, side and rear yards, and maximum height of structures, in the several districts as set forth herein, except as may otherwise be provided in this Ordinance.

Side lot lines may deviate from this requirement for natural constraints, such as watercourses, wetlands, etc., or where prudent subdivision practices necessitate special consideration. In all such cases the burden shall be on the applicant to justify such deviations in design.

2. Lot Lines To Be Substantially At Right Angles To Street Lines

Side lot lines shall be substantially at right angles to straight street lines, or radial to curved street lines, for their full length from front to rear.

3. The land and yard space required for any new building or use shall not include any land or area required by any other building or use to fulfill zoning requirements.

4. Developable Land Area

This provision shall not apply to any lot of less than two acres in area existing and recorded as of July 1, 1994.

For the purpose of calculating the minimum lot size required by this Ordinance or calculating the maximum number of units, maximum lot coverage, or maximum density permitted in accordance with any development standards contained in this Ordinance, the terms "land", "land area", "lot size", and "lot area" or any such similar term shall mean "developable land area", which is defined as follows:

Developable Land Area is the total gross land area of the parcel proposed for development LESS the total of the following:

- a) Freshwater wetlands as defined in Title 2, Chapter 1 of the General Laws of Rhode Island as amended and in any rules and regulations adopted pursuant thereto. Provided, however, that any setback requirement from the edge of a wetland as so defined in Title 2, Chapter 1, shall not be included in the calculation of wetland area.
- b) Coastal shoreline systems as defined by Section 120.0-2A.1 of the Rhode Island Coastal Resources Management Program, as amended February 1982, or subsequent amendments thereto, as follows:
 - (1) Beaches and barrier beaches
 - (2) Cliffs, ledges and bluffs
 - (3) Coastal wetlands
 - (4) Sand dunes
 - (5) All directly associated contiguous areas which are necessary to preserve the integrity of such features.
- c) Any public or private street or street right-of-way.
- d) Existing water surfaces.

- e) Areas required for stormwater retention/detention under this Ordinance, or any other Ordinance of the Town of Portsmouth, or by the RI Dept. of Environmental Management, or by the RI Coastal Resources Management Council.
 - f) Areas required for utility easements of public utilities.
5. No yard or lot legally existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.
6. Corner Lot - The front lot line of a corner lot shall be established by which lot line the front entrance to the building faces, or is proposed to face. Corner lots may deviate from this requirement if strict application would prevent any reasonable use of said lot. Burden shall be on the applicant to justify such deviations.
7. Density and coverage in multi-use situations.
On any lot on which more than one type of use is allowed, either as a matter of right or as a special use permit, the amount of land needed to meet the area or coverage requirements for one use may not be used to meet the requirements of any other use. Where the ordinance may be interpreted in more than one manner, that interpretation shall be used which results in the least intensive use of the land and the most open space.
8. Any land taken by eminent domain, or conveyed for a public purpose for which the land could have been taken or was taken by eminent domain, shall not be deemed to be transferred in violation of the land area, width and space provisions of this Ordinance.

Section B. LAND SPACE REQUIREMENTS TABLE

Zoning District	Min. Lot Size	Min. Lot Area per Dwelling Unit	Min. Lot Frontage	Minimum Yard Setbacks			Maximum Bldg. Height		Max. % Lot Coverage
				Front	Rear	Side	Stories	Feet	
RESIDENTIAL DISTRICTS									
R-10	10,000*	10,000***	100'	20'	20'	10'	2-1/2	35'	20%
R-20	20,000*	15,000***	110'	30'	30'	15'	2-1/2	35'	20%
R-30	30,000*	30,000***	125'	30'	30'	20'	2-1/2	35'	20%
R-40	40,000	40,000	125'	30'	30'	20'	2-1/2	35'	20%
R-60	60,000	60,000	200'	50'	50'	50'	2-1/2	35'	10%
COMMERCIAL DISTRICTS									
C-1	20,000		110'	30'	20'	15'	2	35'	25%
TC-C ¹	20,000		110'	5'	20'	15'	3	35'	35%
INDUSTRIAL DISTRICTS									
I-L	40,000		200'	60'	50'	30'	2	35'	25%
I-H	40,000		200'	60'	50'	30'	2	35'	25%
WATERFRONT DISTRICTS									
WD	20,000	15,000	110'	30'	30'	15'	2-1/2	35'	30%

* Except 40,000 square feet where not serviced by a public water system

** Where more than one dwelling unit is permitted on a lot.

Section C. SPECIAL YARD AND COVERAGE REQUIREMENTS

1. Not less than the frontage requirements shall be maintained throughout the front yard depth, except as provided for in Section D.5 of this Article or by dimensional variance, and for Planned Unit Developments per the provisions of Article VIII ².
2. The required front, side and rear yards shall be unoccupied and unobstructed by buildings or structures, except as provided as follows:
 - a) Ordinary projections of window sills, cornices, eaves and other structural features may extend not more than eighteen (18) inches into the space above required yards:
 - b) Signs as permitted herein;
 - c) Driveways and walkways;
 - d) Fences as permitted herein;
 - e) Accessory uses and structures as permitted herein.
3. On lots abutting streets on more than one side, the front yard requirements shall apply to each of the abutting streets.

4. A dwelling need not be set back more than the average of the setbacks of dwellings on the lots adjacent to either side. If a vacant lot exists on one side, it shall be considered as a dwelling setback at the depth of the required front yard.

5. Storage sheds up to 120 sq. ft. in area must be located in the rear yard and are permitted no closer than three (3) feet to rear and side lot lines. Storage sheds over 120 sq. ft. in area must be located in the rear yard and meet all dimensional requirements of the district in which it is located.

6. On any lot which contains a development of a commercial nature there shall be a compact evergreen screen along any side or rear lot line which abuts a residential zone. The screening area shall be five feet deep and the evergreen plants shall be at least six feet in mature height. In place of said screening area, an opaque fence may be allowed as a special condition.

7. If more than one building (other than a one, two, or three car garage, a tool shed, a greenhouse or a cabana) is lawfully placed on any lot in single or common ownership, the distance between the nearest parts of such buildings shall be not less than twenty (20) feet.

8. Open storage must provide front, side and rear yards as indicated by district.

9. Maximum Lot Coverage may be increased in the TC zone and in Planned Unit Developments if off-site parking is provided per the provisions of Article. IX. Section A. 6 or 7. herein. ³

10. In all districts, off-street parking provided and maintained as paved/impervious surface shall be counted as part of the allowable lot coverage as defined and specified herein and in Articles VII, VIII and IX of these regulations. ⁴ However, driveways to and parking areas for single and two-family residential uses, other than those listed in Article VII and VIII, shall not be counted toward lot coverage. ⁹

11. Parking areas composed of pervious surfaces are encouraged for all land uses and lots, unless there are overriding environmental limitations, and may be provided to meet part of any required parking spaces on a lot. Except for single and two-family residential uses, as above¹⁰, 20% of such pervious surfaces which provide for grass surface shall be counted as part of the overall allowable lot coverage; otherwise 60% of such pervious surfaces shall be counted. ⁵

Section D. HEIGHT AND YARD MODIFICATIONS

1. Height restrictions may be waived by the Board of Review for office buildings, Planned Unit Developments ⁶ and motels subject to the following conditions:

	<u>Town Center</u> ⁷	<u>All Other Districts</u>
Minimum land area	2 acres	5 acres
Minimum frontage	110 feet	300 feet

Minimum yard depths in addition to required yard depths; one (1) foot for each foot of height in excess of maximum allowed as a matter of right for the zoning district in which it is located.

Except fifty (50) feet when abutting a residential zone, and screening shall be provided.

2. The following structures or parts of structures, when accessory to a permitted or special use permit principal use may be permitted above the maximum height limitations set forth herein, provided they meet all other rear lot, side lot and front lot requirements of this Ordinance:

Flagpoles, chimneys, radio masts, televisions antennas, water towers, skylights and other necessary features appurtenant to buildings which are usually carried above roofs and are not intended for human occupancy.

a) Wireless or broadcasting towers are not excepted herein, but are subject to a special use permit. (See also Article VII. Section C. for antennas over 35 ft. in height.)

3. Structures other than those listed in the paragraph above, may exceed the height limitation provided only upon the granting of a dimensional variance by the Zoning Board of Review.

4. For the purpose of side yard regulations, the following dwellings with common party walls shall be considered as one building occupying one lot: duplex dwellings and townhouse dwellings.

5. Irregular shaped lots are to receive special consideration by the Board in that lot frontage may be determined at a depth of 30 feet radially opposite and concentric with the front boundary, providing that the front boundary line is not less than 75 feet in length. This 30 foot strip is to be excluded from the overall lot size requirement.

6. Side Yard and Rear Yard setbacks may be reduced, except where abutting residentially zoned parcels, in the Town Center District and in Planned Unit Developments, dependent upon the degree of fire protection and access, in consultation with the Fire Department.⁸

Section E. DENSITY AND COVERAGE IN MULTI-USE SITUATIONS

Except as otherwise provided herein, on any lot on which more than one type of use is allowed, either as a matter of right or as a special use permit or a Planned Unit Development, the amount of land needed to meet the area or coverage requirements for one use may not be used to meet the requirements of any other use. Where the ordinance may be interpreted in more than one manner, that interpretation shall be used which results in the least intensive use of the land and the most open space.

¹ TC-C (Town Center Commercial) adopted October 27, 2004.

² “and for Planned Unit Developments per the provisions of Article VIII” adopted October 27, 2004.

³ Adopted October 27, 2004.

⁴ Adopted February 4, 2008.

⁹ Adopted February 13, 2012

¹⁰ Adopted February 13, 2012

⁵ Adopted February 4, 2008.

⁶ "... for Planned Unit Developments per the provisions of Article VIII" adopted October 27, 2004.

⁷ TC-C (Town Center Commercial) adopted October 27, 2004.

⁸ D. 6. Adopted October 27, 2004. ⁹ Adopted February 13, 2012

⁹ Adopted February 13, 2012

¹⁰ Adopted February 13, 2012

ARTICLE V: USE REGULATIONS

1. Except as otherwise provided in this Ordinance, in each district no building, structure, or land shall be used or occupied except for the purposes permitted as set forth in the accompanying Table of Use Regulations, Section B.

Proposed uses not so listed may be presented to the Zoning Board of Review by the property owner. Such uses shall be evaluated by the Zoning Board of Review according to the most similar use(s) that is (are) listed, as well as the purposes and uses generally permitted in the subject use district. The Zoning Board of Review may approve the proposed use as permitted, or deny the proposed use as not permitted, or allow the proposed use subject to a Special Use Permit.

2. A use listed in Section B of this Article is permitted as a right in any district under which it is denoted by the letter "Y" subject to such requirements as may be specified elsewhere in this Ordinance.

3. If designated in the Tables by the letter "S", the use is permitted as a Special Use Permit by the Zoning Board of Review subject to such restrictions as set forth elsewhere in this Ordinance and such further restrictions as said Board may establish. The designation of "S" in the Table in given district does not constitute an authorization or an assurance that such use will be permitted.

Nothing herein contained shall preclude the Board of Review from granting multiple Special Use Permits for a single project or proposal or to condition the granting of one or more Special Use Permits upon the implementation or completion of one portion of a project, a master plan for which is submitted at the time of the application for Special Use Permits. Each application for a Special Use Permit shall be evaluated as to its probable effect on the adjacent property, the neighborhood and on the community and may be approved or denied as the findings indicate appropriate. Among, but not limited to, are the following items which are to be considered when granting a Special Use Permit: the desired use will not be detrimental to the surrounding area, adequate protection is afforded to the surrounding property by the use of open space and planting, control of vehicular lot access and parking is provided for, control of noise, smoke, odors, lighting and any other objectionable feature is provided for, solar rights of the abutters to be provided for.

Special Use Permits are further governed by the provisions of Article VII of this Ordinance.

4. A use listed in Section B of this Article is not permitted in any district under which it is denoted by the letter "N".

5. Access to lots located in a C-1 district must be other than from a street located in an "R" district.

PRINCIPLE USES DISTRICTS**A. RESIDENTIAL**

(Note: Please also refer to definitions of 'dwelling unit', 'family', and 'household'.)

	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
1. One detached dwelling unit on a separate lot occupied by not more than one household.	Y	Y	Y	Y	Y	N*	S	S	S	N
2. One two-family or one duplex structure on a separate lot.	Y	Y	Y	Y	Y	N*	S	S	S	N
3. Motels and Hotels (See Article VII.)	N	N	N	N	N	S	S	S	S	S
4. Renting of rooms in an existing dwelling unit to not more than four (4) persons provided there are no separate cooking facilities and no separate means of ingress or egress.	Y	Y	Y	Y	Y	N*	N	N	S	N
5. Renting rooms in an existing dwelling unit to more than four (4) persons.	N	N	N	N	N	S	N	N	S	N
6. Conversion of an existing dwelling unit to accommodate not more than two (2) households provided there is no external evidence of occupancy by more than one (1) household and provided the dimensional requirements for a two-family dwelling are met.	Y	Y	Y	Y	N	N*	S	S	S	N
7. Conversion of an existing dwelling unit to accommodate more than two (2) families.	S	S	S	S	N	N*	S	S	S	N
8. Trailer or mobile home, except in a trailer or mobile home park.	N	N	N	N	N	N	N	N	N	N
9. Trailer park or mobile home park.	N	N	N	N	N	N	N	S	N	N
10. Apartments, Condominiums, Cluster and Town Houses or Multi-family development (See Article VII.)	S	S	S	S	N	N	N	N	S	N

* Lots directly abutted on both sides by residential uses may apply for a special use permit for said residential use.

<u>A. RESIDENTIAL (cont.)</u>	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
11. Mixed Residential and Commercial Uses, except Home Occupations.	N	N	N	N	N	S	S	S	S	S
12. Community Residences (See definition.)	Y	Y	Y	Y	Y	Y	S	S	S	S
13. Planned Marina Village Development (PMVD), as approved by the Planning Board ¹	N	N	N	N	N	N	N	N	Y	N
14. Planned Resort Development (PRD), as approved by the Planning Board * ²	N	Y*	N	Y*	N	N	N	Y*	N	N
<u>B. INSTITUTIONAL, RECREATIONAL AND EDUCATIONAL USES</u>	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
1. Place of worship.	S	S	S	S	S	S	S	S	S	N
2. Private or public school not conducted as a private business for gain.	S	S	S	S	S	S	S	N	N	N
3. Cemeteries or mausoleums.	S	S	S	S	S	S	S	S	N	N
4. Public park or playground, public recreational building or facility.	S	S	S	S	S	S	S	S	S	S
5. Public utilities, limited to electrical, telephone, water, gas, cable television and sewer.	S	S	S	S	S	S	S	S	S	N
6. Private non-profit libraries or museums.	S	S	S	S	N	Y	S	S	S	S
7. Private non-profit community center building, settlement house, adult education center or other similar facility.	S	S	S	S	S	S	N	N	N	S
8. Hospital, clinic, infirmary, nursing home, convalescent home, institutional residence group homes or other congregate care facility not qualifying as a community residence.	S	S	S	S	N	S	S	N	N	S

D. OFFICES AND LABORATORY USES

	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
1. Business, financial or professional offices with no retail, manufacturing or processing.	N	N	N	N	N	Y	Y	Y	Y	S
2. Offices and clinics for medical, psychiatric, or other health services for the examination or treatment of persons as out-patient, including laboratories that are part of such office or clinic.	N	N	N	N	N	Y	S	S	N	S
3. Laboratory or research facility.	N	N	N	N	N	S	S	S	S	N
4. Radio, television or recording studio.	N	N	N	N	N	S	S	S	S	S

E. RETAIL BUSINESS AND CONSUMER SERVICE ESTABLISHMENTS

	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
1. Store for retail sale of merchandise, provided all display storage and sales for materials are conducted within a building and there is no manufacturing or assembly on the premises.	N	N	N	N	N	Y	S	S	Y	S
2. Store for retail sale or merchandise, with outside display storage of wares and merchandise, provided there is no manufacturing or assembly on the premises.	N	N	N	N	N	S	S	S	S	S
3. Eating places serving food and beverages to be consumed within the building.	N	N	N	N	N	Y	S	S	Y	S
4. Stores for sale of marine supplies and associated items including boats and trailers.	N	N	N	N	N	Y	Y	Y	Y	N
5. Service business serving needs of local residents.	N	N	N	N	N	Y	S	S	Y	S
6. Marinas including sales and repair of boats and related supplies.	S	S	S	S	S	S	S	S	Y	N
7.1. Mortuary or funeral establishment (crematorium not permitted on the premises). ⁵	S	S	S	S	N	Y	S	S	N	N

14. New retail business, office or consumer service development of over 5,000 gross square feet of floor area or over 20,000 square feet of total land area. (See Article VII. Section G.)

N N N N N S S S S S

14.1. Addition to new retail business, office or consumer service complex, as in 14, provided the additions increase the size of the buildings by no more than 30% over the size of the buildings as constructed under the first application approved under Section 14. Such additions need not be constructed at the same time.⁶

N N N N N Y Y Y Y S

E. RETAIL BUSINESS AND CONSUMER SERVICE ESTABLISHMENTS USES (cont.)

R10 R20 R30 R40 R60 C-1 I-L I-H WD TC

14.2 Addition to existing retail business, office or consumer service complex provided the addition increases the existing buildings by no more than 30% over the size of the buildings as existing at the time of the enactment of this amendment. Such additions need not be constructed at the same time.

N N N N N Y Y Y Y S

14.3 Addition to new or existing retail business, office or consumer service complex of more than 30% over the size of the buildings as existing at the time of the enactment of this amendment, or a Substantial Improvement, as defined in Article II. Such additions need not be constructed at the same time.⁷

N N N N N S S Y Y S

14.4 New or expanded retail business, office or consumer service development totaling over 25,000 square feet building gross floor area of the first floor in one or more buildings as approved by the Planning Board as a Planned Retail/Service Development (See Article VIII. Section D).⁸

N N N N N Y Y Y Y Y

14.5 New or expanded **single use retail business of over 45,000 square feet building foundation area in one building abutting the Traffic Sensitive District.**⁹

N N N N N N N N N N

15. Sales places for flowers, garden supplies, agricultural produce partly or wholly outdoors including commercial greenhouses.	S	S	S	S	S	Y	S	S	N	S
16. Place for exhibition, lettering or sale of gravestones.	N	N	N	N	N	Y	Y	Y	N	N
17. Marine Trade Development as approved by the Planning Board. ¹⁰	N	N	N	N	N	N	Y	Y	Y	N
18. Planned Retail/Service Development as approved by the Planning Board. ¹¹	N	N	N	N	N	Y	Y	N	N	S

F. AUTOMOTIVE SERVICE AND DRIVE-IN RETAIL SERVICE

	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
1. Automobile fuel service stations.	N	N	N	N	N	S	N	S	Y	N
2. Sale or rental of boats and rental of other motor vehicles and accessory storage.	N	N	N	N	N	S	S	S	Y	N
2a. Sale or rental of automobiles.	N	N	N	N	N	Y	N	N	N	N
3. Automobile repair shops, provided all work is carried out within the building.	N	N	N	N	N	S	S	N	N	N
4. Boat Repair Shops	N	N	N	N	N	S	S	S	Y	N
5. Car washing establishments.	N	N	N	N	N	S	S	S	N	N
6. Paint and body shops, provided all work is carried out within the building.	N	N	N	N	N	S	S	S	S	N
7. Free standing drive-in or drive-through facility, whether attended by an employee or unattended.	N	N	N	N	N	S	S	S	S	N

G. INDUSTRIAL, WHOLESALE AND TRANSPORTATION USES

	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
1. Laundries and dry cleaning plants.	N	N	N	N	N	S	S	S	S	N
2. Printing, binding, publishing and related arts and trades.	N	N	N	N	N	S	Y	Y	N	N

6. The raising or keeping of animals, livestock or poultry as pets or for use by residents of the premises provided that no buildings or enclosure (including fencing) for any animal may be less than fifty (50) feet from side, rear or front lot line. Provided, however, the raising or keeping of swine shall comply with all R.I. Dept. of Health rules and regulations not inconsistent with the provisions hereof.	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
7. Home occupation of a resident provided that not more than three (3) persons shall practice or be employed on the premises at any one time and further provided that not more than 20% of the floor area is so used. (See Definition of Home Occupations)	Y	Y	Y	Y	Y	Y	Y	Y	Y	S
8. Restaurants inside a building for the use of the primary occupants of the building provided there is no exterior evidence of same.	N	N	N	N	N	Y	Y	Y	Y	S
9. Restaurants primarily for the use of residents of an apartment building or group of apartment buildings provided there is no exterior evidence of same and further provided the apartment building or group of buildings is under one management and contain not less than one hundred (100) dwelling units. (Leasing of the restaurant is permitted.)	S	S	S	S	N	N	N	Y	Y	S
10. The storage of one (1) recreational vehicle and one (1) boat and trailer, meeting the Yard requirements as set forth in the Land Space Requirements Table, except that in R-10 the yard requirements for this use shall be fifty (50%) percent of those set forth in the Land Space Requirements Table.	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
11. Construction equipment, storage of.	N	N	N	N	N	S	S	Y	Y	N
12. Windmills and other wind power generating devices, whether commercial or otherwise.	S	S	S	S	S	S	S	S	S	N
<u>I. ACCESSORY USES (cont.)</u>	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
13. Drive-in or drive-through facility, whether attended or unattended by an employee, that is accessory to the primary commercial use.	N	N	N	N	N	S	S	S	S	S

14. Day Care conducted in one's own home, but otherwise meeting the definition of 'Day Care-Family Day Care Home', provided there is no exterior signage.	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
15. Accessory Family Dwelling Unit, providing there are no separate cooking facilities and no separate means of ingress or egress.	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
16. Private school conducted as an accessory to the principal use. (See also parking requirements, Article IX.)	N	N	N	N	N	Y	Y	Y	Y	S

** Provided the development is approved by the Planning Board pursuant to Article VII. ¹⁷

¹ Adopted Sept. 19, 2006. All "Planned Unit Developments" are subject to Article VIII, and are approved by the Planning Board.

² Adopted Sept. 19, 2006. All "Planned Unit Developments" are subject to Article VIII, and are approved by the Planning Board.

³ The words: "fish and shellfish" were added to the ordinance as adopted September 9, 1997.

⁴ "or an adjacent parcel" adopted October 25, 2010.

⁵ Wording and use codes were adopted by the Town Council on April 9, 1996. Effective that date, the following wording was repealed:

7. Mortuary or funeral establishment (crematorium permitted on the premises).	S	S	S	S	N	Y	N	N	N
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⁶ Article V. Section B. 14.1 and 14.2 were added to the Ordinance as adopted on October 15, 1996.

⁷ Adopted January 21, 2004

⁸ Adopted February 4, 2008

⁹ Adopted February 4, 2008

¹⁰ " ** " In use tables adopted September 23, 2002 as part of Planned Unit Development provisions. All "Planned Unit Developments" are subject to Article VIII, and are approved by the Planning Board.

¹¹ " ** " in use tables adopted July 14, 2003 as part of Planned Unit Development provisions. All "Planned Unit Developments" are subject to Article VIII, and are approved by the Planning Board.

¹² The words: "provided that food or animal waste processing is not less than fifty (50) feet from the property boundary" were added to the ordinance as adopted September 9, 1997.

¹³ Op. Cit. Planned Unit Development.

¹⁴ Op. Cit. Planned Unit Development.

¹⁵ Adopted June 17, 2002.

¹⁶ Adopted June 17, 2002.

¹⁷ Op. Cit. Planned Unit Development.

ARTICLE VI. NON-STANDARD DEVELOPMENT**A. SUBSTANDARD LOTS OF RECORD****1. Applicability**

For the purpose of this section a substandard lot of record lot is a lot which does not meet one (1) or more of the minimum dimensional requirements for size or frontage required in the zoning district in which it is located and which is a lot of record the dimensions of which have not been altered since its creation by a voluntary conveyance which rendered such lot more substandard and which was:

- a) approved by the Planning Board and duly recorded after August 3, 1959; or
- b) approved by the Zoning Board of Review and duly recorded after June 13, 1965; or
- c) certified by the Planning Board as "approval not required" and duly recorded after August 3, 1959; or
- d) created by a deed or plat duly recorded prior to August 3, 1959.

2. Continuance of a Use on a Substandard Lot of Record

Any legal use shall be permitted to continue in the manner and extent existing as of the effective date of enactment or amendment of this ordinance, subject to the provisions of this ordinance regarding discontinuance, destruction or demolition, change of use, and extension or alterations.

3. Single Substandard Lots Of Record

- a) A lot or parcel of land having a frontage or lot area that is less than required by Article IV. may be considered buildable for single family residential purposes regardless of the lot frontage or lot area.

Nothing in this section shall be construed as exempting single family substandard lots of record from complying with the maximum percentage of lot coverage of principal and accessory buildings, maximum height or building setback requirements of Article IV. Any lot meeting those requirements shall be considered as a conforming lot of record for single family residential purposes.

- b) If a non residential structure can be extended or enlarged in any lawful manner without increasing the extent of its nonconformity, then any extension or enlargement thereof shall only be permitted in such lawful manner upon the granting of a special use permit by the Zoning Board of Review.

4. Dimensional Variances on Substandard Lots of Record

In appealing for dimensional variances to build a new or enlarge an existing structure on a substandard lot, in addition to the requirements for variances in Article VI. Section D., the Zoning Board of Review shall consider whether such variance:

- a) Would allow adequate space for fire protection;
- b) Provide adequate light and air between buildings;

- c) Would alter the character of the neighborhood, or adversely affect neighboring property;
- d) Would create lot coverage and setbacks less than the average lot coverage and setbacks of adjacent properties;
- e) Would impose a substantial detriment to the public or to immediate neighbors.

Section B. NONCONFORMING DEVELOPMENT

1. A non-conforming use of land lawfully existing at the time of the passage of this Ordinance may be continued provided that such non-conforming use of land shall not in any way be expanded or enlarged, except as provided in this Section.
2. A building or structure which is devoted to a non-conforming use existing at the time of the passage of this Ordinance that is lawfully destroyed or involuntarily destroyed, such as by fire or natural catastrophe, shall be completely repaired or completely reconstructed within two (2) years, provided it is devoted to the same use as was made of it before such partial or total destruction, in order to maintain legal non-conforming status.
3. When a non-conforming use has been abandoned for more than one (1) year, the building or structure or land that was devoted to such non-conforming use shall not thereafter be returned to such non-conforming use. Abandonment of a nonconforming use shall consist of some overt act, or failure to act, which would lead one to believe that the owner of the nonconforming use neither claims nor retains any interest in continuing the nonconforming use unless the owner can demonstrate an intent not to abandon the use. An involuntary interruption of nonconforming use, such as by fire and natural catastrophe, does not establish the intent to abandon the nonconforming use. However, if any nonconforming use is halted for a period of one (1) year, the owner of the nonconforming use will be presumed to have abandoned the nonconforming use, unless that presumption is rebutted by the presentation of sufficient evidence of intent not to abandon the use.
4. A building or structure that exists as a non-conforming use at the time of passage of this Ordinance, may continue to function as a non-conforming use of the same type or any other use that is permitted by this Ordinance, or other such use may be added to the existing use within the confines of the existing building, with the approval of the Zoning Board of Review.

Section C. ALTERATION OF NONCONFORMING DEVELOPMENT

1. With Board of Review approval as a special use permit, a building or structure which is devoted to a non-conforming use lawfully existing at the time of the passage of this Ordinance may be added to or enlarged provided that the front, side and rear yards, lot coverage, height of such enlarged building or structure and parking requirements meet the zoning requirements of the district in which is located.
2. No lot area shall be so reduced or diminished that the yards or other open spaces or total lot area shall be smaller than prescribed by this

Ordinance, unless the reduction in area is due to the taking of a portion of the lot for public use.

3. A legally non-conforming use shall not be changed to a use other than a conforming use. The Zoning Board of Review may permit a change in use as a special use permit. Any change in use shall be more in keeping with the characteristics of the neighborhood.
4. Any alteration or change in use permitted herein shall adhere more closely to the intents and purposes of this Ordinance.

Section D. VARIANCES

1. An application for relief from the literal requirements of this zoning ordinance because of hardship may be made by an applicant by filing with the Zoning Enforcement Officer an application describing the request and supported by such data and evidence as may be required by the Zoning Board of Review or by the terms of this ordinance. The Zoning Enforcement Officer shall immediately transmit each application received to the Zoning Board of Review and shall transmit a copy of each application to the Planning Board.
 - a) All appeals including appeals involving applications for variances shall be made on forms as provided by the rules of the Zoning Board of Review, and the written ruling or decision of the enforcement official together with all other papers, plans and data constituting the record of the case shall be transmitted to the Zoning Board of Review.
2. The Zoning Board of Review, immediately upon receipt of an application for a variance in the application of the literal terms of the zoning ordinance, may request that the Planning Board and/or staff shall report its findings and recommendations, including a statement on the general consistency of the application with the goals and purposes of the comprehensive plan of the Town, in writing to the Zoning Board of Review within thirty (30) days of receipt of the application from that board.
3. The Zoning Board of Review shall hold a public hearing on any application for variance in an expeditious manner, after receipt, in proper form, of an application, and shall give public notice pursuant to the provisions of Article XIII.
4. A variance shall be defined as:

Permission to depart from the literal requirements of a zoning ordinance. An authorization for the construction or maintenance of a building or structure, or for the establishment or maintenance of a use of land, which is prohibited by a zoning ordinance. There shall be only two (2) categories of variance, a use variance or a dimensional variance.

 - a) USE VARIANCE. Permission to depart from the use requirements of a zoning ordinance where the applicant for the requested variance has shown by evidence upon the record that the subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the zoning ordinance.
 - b) DIMENSIONAL VARIANCE. Permission to depart from the dimensional requirements of a zoning ordinance, where the applicant for the

requested relief has shown, by evidence upon the record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations. However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

5. In granting a variance, the Zoning Board of Review shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:
 - a) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in Section 45-24-30 (16) General Laws of Rhode Island (amended 2003-04-28);
 - b) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
 - c) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based; and
 - d) That the relief to be granted is the least relief necessary.
 - e) That any relief granted is in accordance with the definition of variance provided in this ordinance.
6. The Zoning Board of Review shall, in addition to the above standards, require that evidence be entered into the record of the proceedings showing that:
 - a) In granting a use variance the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and
 - b) In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience. (amended 2003-04-28) The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.
7. Expiration^{1,2}

Any variance which is not utilized within a period of one (1) year from the date of the signing of the decision granting said variance² shall be void unless, upon written request of the applicant and good cause shown, the Zoning Board of Review, following a public hearing thereon, grants an extension of not more than one (1) year. Not more than a single, one (1) year extension may be granted following any one public hearing. The Board of Review shall not grant successive extensions which total more than two (2) years on any project, (excluding any extensions granted prior to enactment of this amendment).

- a) If written proof from the Portsmouth Water and Fire District is provided showing that the applicant is unable to secure a tie-in to the Portsmouth Water and Fire District's water supply, then the Zoning Board of Review shall grant an extension for a period of one (1) year, provided that the applicant demonstrates reasonable diligence in attempting to secure such tie-in.

- b) In the event an application for extension is filed prior to the passage of one year from date of authorization, or the end of any subsequent extension term thereof, the variance shall remain in force and effect until the Board of Review has acted on said application for extension.

¹ ARTICLE VI, Section D. 7. amended July 12, 2002.

² ARTICLE VI, Section D. 7. amended August 10, 2004.

ARTICLE VII. SPECIAL USE PERMITS**Section A. GENERAL**

1. A Special Use Permit is required for the following uses:
 - a) Uses in Flood Hazard Areas designated by the letter "R" in Article III, Section E.
 - b) Uses designated by the letter "S" in the Tables of Use Regulations, Article V, Section B.
 - c) Enlargement of a structure on a substandard lot of record according to the provisions of Article VI, Section A.
 - d) Alterations to or change in use of non-conforming uses according to the provisions of Article VI, Section B and C.
 - e) Signs requiring a Special Use Permit as specified in Article IX, Section B.
 - f) Apartments, condominiums, cluster development or townhouses, as further defined in Section C. herein.
 - g) Hotels and Motels, as further defined in Section D. herein.
 - h) Antennas, as further defined in Section E. herein.
 - i) Light Industry, as further defined in Section F. herein.
 - j) Retail, Office or Consumer services Complex, as further defined in Section G. herein.
 - k) All proposed uses in the Town Center District that are not prohibited per Article V, Section B. ¹
2. Designation as a special use permit does not constitute an authorization or an assurance that such use will be permitted. Rather, each application for a special use permit shall be evaluated as to its probable effect on the adjacent property, the neighborhood and on the community and may be approved or denied as the findings indicate appropriate.
3. Nothing herein contained shall preclude the Zoning Board of Review from granting multiple special use permits for a single project or proposal or to condition the granting of one or more special use permits upon the implementation or completion of one portion of a project, a master plan for which is submitted at the time of the application for special use permits. (See also Article X. Special Conditions.)
4. In granting a special-use permit, the Zoning Board of Review may grant one (1) or more dimensional variances, per the provisions of Article VI. Section D. Variances. ²
 - a) Dimensional variances granted in conjunction with a special-use permit shall be supported by independent evidence on the record satisfying each of the requirements for a dimensional variance, and the Board shall vote on each dimensional variance before voting on the special-use permit. ³
5. Items to be considered when granting a special use permit include, but are not limited to, the following:

- a) The desired use will not be detrimental to the surrounding area;
- b) It will be compatible with neighboring land uses.
- c) It will not create a nuisance or a hazard in the neighborhood.
- d) Adequate protection is afforded to the surrounding property by the use of open space and planting;
- e) Safe vehicular access and adequate parking are provided;
- f) Control of noise, smoke, odors, lighting and any other objectionable feature is provided;
- g) Solar rights of the abutters are provided for;
- h) The proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth; and
- i) The health, safety and welfare of the community are protected.
- j) It is consistent with the Purpose of Design Standards set forth in Article IX. Section D. and, for developments within the Town Center District, the purpose of that district as expressed in Article III.⁴

6. The Zoning Board of Review may, at its option, impose special conditions on any Special Use Permit, as further defined in Article X. Special Conditions.

7. Where these regulations may conflict with other regulations, the more stringent regulation shall prevail.

8. Expiration

Any special use permit which is not utilized within a period of one (1) year from the date of the signing of the decision granting said Special Use Permit¹ shall be void unless, upon written request of the applicant and good cause shown, the Zoning Board of Review, following a public hearing thereon, grants an extension of not more than one year. Not more than a single, one (1) year extension may be granted following any one public hearing. The Zoning Board of Review shall not grant successive extensions which total more than two (2) years on any project, (excluding any extensions granted prior to enactment of this amendment).

- a. If written proof from the Portsmouth Water and Fire District is provided showing that the applicant is unable to secure a tie-in to the Portsmouth Water and Fire District's water supply, then the Zoning Board of Review shall grant an extension for a period of one (1) year, provided that the applicant demonstrates reasonable diligence in attempting to secure such tie-in.
 - b. In the event an application for extension is filed prior to the passage of one (1) year from date the signing of the decision granting said Special Use Permit⁵, or the end of any subsequent extension term thereof, the special use permit shall remain in force and effect until the Zoning Board of Review has acted on said application for extension.
-

Section B. PROCEDURES

1. The applicant shall, on a form prescribed by the Zoning Enforcement Officer together with a proposed site plan, as required for the pertinent types of special use permits in this article, submit an application describing the request, supported by such data and evidence as may be required by the Zoning Board of Review or by the terms of this ordinance, the need and justification for the requested Special Use Permit.
2. The Zoning Enforcement Officer shall immediately transmit said completed application to the Zoning Board of Review and, if required by the provisions of this Article, shall transmit a copy of each application to the Planning Board and the Design Review Board. Planning Board and Design Review Board review and procedures for this purpose are further defined in Article XI. Development Plan Review.
 - a) This provision shall apply to all non-residential developments and multi-family developments designated with an "S" (Special Use Permit) in the C-1, TC-C⁶ and I-L zones in Article V herein.
3. The Zoning Board of Review shall hold a public hearing on any application for Special Use Permit in an expeditious manner, after receipt, in proper form, of an application, and shall give public notice pursuant to the provisions of Article XIII.
4. In its decision, the Zoning Board of Review shall provide, in writing, findings of fact and decisions, and conclusions of law.
5. Appeals from the decision of the Zoning Board of Review may be taken pursuant to Article XVII.
6. For each proposed development the applicant shall submit a filing fee payable to the Town of Portsmouth per the Town of Portsmouth Ordinance on fees.
7. Preliminary plans may be submitted to the Planning Board and the Design Review Board, as applicable, for informal discussion for the following types of Special Use Permits only. Any tentative advisory opinion on a preliminary plan by the Planning Board or the Design Review Board shall not be binding upon the Planning Board, Design Review Board or Zoning Board of Review:
 - a) Apartments, Condominiums, Cluster or Town Houses
 - b) Retail Business, Office or Consumer Service Complex: New, Substantial Alteration or Substantial Improvement
 - c) All uses designated as a special use permit within the Town Center District.⁷

Section C. APARTMENTS, CONDOMINIUMS, CLUSTER OR TOWN HOUSES

1. An apartment, condominium, cluster or town house may be permitted as a special use permit in districts as specified in Article V. Permitted Uses, provided that the Zoning Board of Review, in accordance with this Ordinance, finds that the establishment of the same meets the standards & requirements of this section.
2. The purpose of these regulations is to encourage the appropriate use of land for the development of multi-family housing taking into consideration the natural amenities of the site. No multi-family structure or structures or apartment houses or group of apartment houses shall be erected unless in accordance with the standards set forth in this section.
3. In granting any such special use permit or in permitting any modification of the regulations set forth herein, the Zoning Board of Review may prescribe such conditions and safeguards, as further described in Article X. Special Conditions, as it may deem necessary to prevent nuisance to and promote harmony with nearby property.
4. The disregarding of any such condition or safeguard, when made a part of the terms under which a special use permit is granted, shall be deemed a violation of this Ordinance.
5. A Performance Bond or cash surety in the name of the Town of Portsmouth and in the amount of 5% of the estimated cost of development shall be submitted to the Zoning Enforcement Officer prior to the start of construction. Such Performance Bond or cash surety must be maintained in effect until a Certificate of Occupancy is issued.
6. No proposed development shall be approved by the Zoning Board of Review unless it is served by an adequate sewerage treatment system, as certified by RIDEM, or public sewer, when the same becomes available, and that the sewer line(s) to which it shall be connected, have adequate capacity to carry the additional effluent created by the development. Should the line(s) be determined to be inadequate, only such portion of the development as can be accepted by the sewer line(s) shall be approved for development, provided it meets all other requirements of this Zoning Ordinance.
 - a) In the event a private sewerage treatment plant is to be constructed, it shall be approved by the State of Rhode Island Department of Environmental Management and it shall meet the standards of any federal or state legislation regarding water pollution control before a building permit may be issued.
7. In granting a special use permit for a development under this section the Zoning Board of Review shall, immediately upon receipt of an application hereunder, refer the site plan and related documents to the Portsmouth Planning Board for review and advice, per the stipulations of Article XI. Development Plan Review. Plans for apartment, Condominium and Town House developments within or adjacent to commercial zones shall also be referred to the Design Review Board review and advice, per the stipulations of Article XI. Development Plan Review.

8. The Zoning Board of Review shall require that the developer provide affidavits or statements prior to final approval signed by the Dept. of Environmental Management and the Coastal Resources Management Council that the proposed site does not violate any portion of the Wetlands Act or CRMC regulations, plus permits for curb cuts and connections to State road drainage systems, if applicable.
9. Application shall include eleven (11) full sets of building and site drawings including, but not limited to, sewerage, other utilities, topographical plans, plumbing, heating and electrical plans, etc., as set forth below, and shall, as a condition precedent to the granting of said special use permit, require full adherence to said plans without deviation at any later construction date. The site plan shall conform to the development standards set forth in paragraph 10 below and shall contain the following:
 - a) A location map showing the location of the proposed site in relation to the Town of Portsmouth.
 - b) A plot plan showing the entire area to be developed as well as any abutting land under control of the applicant or owner of the land shown on the plan.
 - c) The site plan shall:
 - (1) Be drawn at a scale of 1" = 40' and be 32" long and 22" wide and contain a north arrow in the upper left corner (A master plan may be of other scale).
 - (2) Contain a title block in the lower right corner including the name of the surveyor, designer and engineer, the name of the development, owner and applicant if other than owner, the date and scale, the acreage and the number of efficiency or one bedroom units, the number of two bedroom units and the number of units containing three or more bedrooms.
 - (3) Show both existing and proposed contours at two (2) foot intervals, by the use of solid and dotted lines.
 - (4) Show size and location of all underground utilities within and abutting the site.
 - (5) Show location and width of all proposed vehicular and pedestrian interior ways.
 - (6) Show location and number of spaces of proposed parking.
 - (7) Show location of all proposed buildings by type (i.e. Apartment, townhouse, recreation, etc.) with the number of units by bedroom distribution.
 - (8) Show location and size of all proposed utilities, as approved by the installing authority.
 - (9) Show location and type of retention/erosion control areas if necessary to meet drainage requirement.
 - (10) Show location of all monuments.
 - (11) Show the names of all abutters as determined from the most recent tax list.
 - (12) Show the proposed treatment of all open spaces

- (13) Show on a separate sheet building elevations.
- (14) Show on a separate sheet preliminary layout of building interiors.

d) Submittal shall also include items required in Article IX Section D. Design Review Standards, as applicable.

- (1) The above elements may be shown on separate sheets.

10. DEVELOPMENT STANDARDS

All developments proposed under this Section shall conform to the following standards:

- a) Minimum Frontage 110'
- b) Minimum Front Yard 30'
- c) Minimum Side Yard 25'
- (1) Driveways may not be counted as side yards.
- d) Minimum Rear Yard 25% or 30'
whichever is lesser
- e) Maximum Lot Coverage by Buildings 25% **
- f) Maximum Building and Parking Area Coverage 40%

** Does include accessory structures such as swimming pools, cabanas, recreational buildings, etc. used exclusively for the residents of the development.

- g) The following are the minimum required buildable land area per unit in square feet. In determining buildable land area, not more than 10% of the area that is subject to periodic or seasonal flooding, per the most recent FEMA maps, shall be counted. (Example: total land area 20 acres of which 5 acres is subject to flooding net buildable land for determining density is 15.5 acres.) The provisions of this subparagraph shall supersede the provisions of Article IV, Section B. Land Space Requirements Table.

- (1) If served by an on site sewer system with effluent being discharged into an on site absorption field, the minimum buildable land area per unit in square feet is as follows:

<u>ZONE</u>	<u>1 BEDROOM</u>	<u>2 BEDROOM</u>	<u>3 BEDROOM</u>	<u>EACH ADDITIONAL BEDROOM</u>
R-10	5,000	8,000	10,000	3,000
R-20 & WD	10,000	16,000	20,000	6,000
R-30	15,000	24,000	30,000	9,000
R-40	20,000	32,000	40,000	12,000

(2) If served by sewer system plant or public sewer system with effluent being discharged into an offside absorption field the minimum buildable land area per unit in square feet is as follows:

<u>ZONE</u>	<u>EACH ADDITIONAL</u>			
	<u>1 BEDROOM</u>	<u>2 BEDROOM</u>	<u>3 BEDROOM</u>	<u>BEDROOM</u>
R-10	3,750	5,600	7,500	2,000
R-20 & WD	7,500	11,000	15,000	4,000
R-30	11,250	17,000	22,500	6,000
R-40	15,000	22,500	30,000	8,000

NOTE: Any room such as a den, playroom, etc. is to be considered as a bedroom for this purpose.

h) Due to the wide range of soil content in the Town of Portsmouth, no on site sewerage system shall be considered completely adequate without attention being given to the existing soil analysis map as prepared by the U.S. Dept. of Agriculture Soil Conservation Service. No opinion pertaining to the adequacy of the proposed system can be given without written evidence of on-site soil exploration tests as required by the R.I. Dept. of Environmental Management. On site sewerage systems shall be approved by the Rhode Island Dept. of Environmental Management.

i) Maximum Building Height: 2 1/2 Stories, not to exceed thirty-five (35) feet.

j) Drainage

(1) The developer shall provide for adequate drainage and shall further provide that the rate of runoff from the property shall not increase during construction or after completion of the development to the detriment of surrounding properties. If the retention of water is deemed necessary, then the retention areas shall be provided prior to construction of any buildings or the surfacing of any areas. The engineer shall submit on separate sheets all computations in determining rates of runoff and shall base all calculations on a ten (10) year storm frequency using the TR-55 method for determining total storm water runoff. These computations shall be prepared by an engineer registered in the State of Rhode Island and he shall affix his seal to the required documents.

k) Sewage System

(1) Public sanitary sewers shall be designed so as to ensure a self-cleaning velocity of not less than two and one half (2.5') feet per second nor more than 10' per second. Computation of sewage and sewage flow calculation shall be submitted.

l) Water

- (1) Computation of water usage and a statement of water availability shall be submitted. Written evidence of permission to connect to a public water supply shall be delivered to the Building Inspector prior to issuance of a building permit.

m) Parkingⁱ

n) Open Space

- (1) Open space shall be provided in appropriate places and every effort shall be made to preserve wooded areas or other site amenities.

o) Building Design and Location

- (1) Where more than one building is erected on a lot it shall be separated from any other building by a minimum of one hundred (100') feet and all buildings shall be set back a minimum of fifty-five (55') feet from the centerline of any interior way and thirty (30') feet from any parking area.
- (2) Town House or attached dwelling: No row of attached buildings shall contain less than three (3) nor more than eight (8) units and the minimum width between party walls shall be not less than eighteen (18') feet.
- (3) No apartment building shall be less than sixty (60') feet in length. No facade or any apartment building shall exceed 160 linear feet without a building jog of at least forty-five (45) degrees for a two wing building or thirty (30) degrees for a three wing building.
- (4) No one building shall contain more than twenty-four (24) units.

p) All interior roadways and parking areas shall be constructed in accordance with the "Construction Standard for Streets" of the "Rules and Regulations Regarding the Platting or other Subdivision of Land" of the Town of Portsmouth.

q) Access and Egress

- (1) For each lot there shall be not more than one entrance and exit driveway for each five hundred (500') feet of the street on which the lot faces. Said entrance and exit shall meet the requirements of the State of Rhode Island Department of Roads and Bridges and the Portsmouth Police and Highway Departments.

r) Acceptable engineering standards shall prevail where no standards are specified.

s) Fire lanes shall be provided for and approved by the Fire Dept.

11. The foregoing Development Standards including but not limited to the parking, open space, building design and location and other standards set forth herein and in Article IX may be modified and/or varied by the Zoning Board of Review upon a finding that such modifications or variations comply with the requirements set forth in of Section A paragraph 4 herein.
12. Where these regulations may conflict with other regulations, the more stringent regulation shall prevail.

Section D. MOTELS and HOTELS

1. No motel or hotel shall be constructed on a lot having less than two hundred (200) feet frontage, nor less than forty thousand (40,000) square feet of lot area.
2. On each lot used for motel or hotel purposes there shall be provided front, rear and side yards each not less than fifty (50) feet in depth.
3. A space not less than twenty (20) feet shall be maintained open with grass, bushes, flowers or trees all along each side yard, rear yard and front yard except for entrance and exit driveways and such open space shall not be built on, not paved nor used for parking.
4. No space within the required front yard depth shall be used for parking except as a temporary nature such as for registering.
5. Each motel or hotel site shall be provided with not more than two (2) motor vehicle driveways for each abutting street which shall intersect the abutting street or streets at ninety (90) degrees.
6. Each rental unit shall contain not less than two hundred ten (210) square feet of habitable floor area.
7. Height restrictions as set forth in Article IV. may be varied subject to Zoning Board of Review for motels containing 100 or more units.
8. Subject to Zoning Board of Review approval, uses such as, but not limited, to restaurants, convention facilities, health clubs, retail shops, beauty and barber shops are permitted within motels containing 100 or more units.
9. In granting a special use permit for a development under this section the Zoning Board of Review shall, immediately upon receipt of an application hereunder, refer the site plan and related documents to the Portsmouth Planning Board for review and advice, per the stipulations of Article XI. Development Plan Review. Plans shall also be referred to the Design Review Board review and advice, per the stipulations of Article XI. Development Plan Review.

Section E. ANTENNAS

1. Antennas proposed to extend over a height of 35 (thirty-five) feet from existing grade may be permitted by special use permit.
2. Each and every antenna proposed to be installed utilizing an individual support structure shall not be allowed within the confines of the designated front, side or rear yards and shall not be installed or erected without the prior approval of the Building Inspector and the acquisition of a lawfully issued building permit therefore.
3. Each such antenna shall be provided with a free-fall radius of 125% of its height, which radius shall be clear of any structure designed for residential use or commercial/industrial occupancy.

Section F. LIMITED LIGHT INDUSTRY

Map 38, Lots

5,6,7,7B,7C,7D,7E,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31 and 32 are to be considered "Limited Light Industry" and is, in addition to other provisions of this ordinance, subject to the following regulations:

1. All structures erected on these lots shall not exceed thirty (30') feet or one story in height. Uses permitted hereunder must be so located that each part thereof is set back at least the following distances:
 - a) Fifty feet (50') from any street or road on which the structure in question fronts.
 - b) Fifty feet (50') from any other property line.
2. Building lot coverage shall not exceed thirty percent (30%) of total lot area.
3. Permitted Uses
No lot within the district shall be used or occupied at any time for other than the purpose of "Limited Light Industrial Uses", which is defined as follows:
 - a) A limited light industrial use is one of such a nature and so designed, constructed and operated that there is no production of sound, heat or glare perceptible at any lot line, and which emits no vibration, smoke, dust, dirt, toxic or offensive odors or gases, electromagnetic or atomic radiation.
 - b) Without limiting the foregoing, uses specifically prohibited within these lots are residential and commercial usages of a retail nature, except facilities expressly designed for the use and benefit of the occupants of a site. In addition, no site shall be used for any industry whose primary business requires industrial sewage disposal facilities, unless the governing municipal and state bodies authorize the use of the available sewage disposal facilities. All liquid or solid wastes must be

treated to conform with applicable standards of the Rhode Island Department of Health and any other regulations of any governing municipal or state agency.

4. All outside storage shall be screened from abutting properties by the erection and maintenance of an opaque fence, not less than six (6') feet in height or a double row of compact evergreen screen not less than six (6') feet in height.
5. 8
6. Any and all loading, unloading or deliveries shall be "off street" and the facilities therefor shall be located at the rear or sides of buildings which do not face the roadway. All loading and unloading areas shall have a minimum surfacing of asphaltic concrete with curbing. Curbing shall be installed in all loading and unloading areas.
7. The area between buildings and property lines is to be used either for open landscape and green areas, or for off-street parking.
8. Fences, walls and hedges may be permitted in any required yard follows, not to exceed the maximum height as follows:

<u>LOCATION</u>	<u>MAXIMUM HEIGHT</u>
Front and side yards	6 feet
Rear Yards	10 feet
Hedges	no restrictions
9. Signs for advertising purposes shall be prohibited, except that one sign flush with an exterior wall or a structure on each building site shall be permitted, as stipulated in Article IX. Section B. Signs. This sign shall indicate no information other than the name of the industry occupying the building site. Sign illumination shall not flash, blink, vary in intensity, revolve or otherwise be or appear to be in motion. Free standing information and directional signs shall be permitted upon approval of the Zoning Board of Review as stipulated in Article IX. Section B. Signs.
10. An accessory use which is clearly incidental and secondary to the principal permitted use of the premises or structure shall be allowed provided that such accessory use shall be located on the premises to which it applies and shall not be detrimental to or impair adjacent properties.
11. Property and buildings to be used for light manufacturing purposes shall be designed and laid out as to minimize disturbance to adjacent property by such features as buffer fences, planting, suitably located points of traffic ingress and egress, and areas for loading and parking.
12. Structures permitted above height requirements on these lots include roof structures for housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and

maintain the building, fire or parapet walls, skylights, towers, steeples flagpoles, chimneys, smokestacks, wireless masts, antennas and water tanks, provided that no roof structure of any space above the height limit shall be allowed for the purpose of providing additional floor space.

Section G. NEW RETAIL BUSINESS, OFFICE OR CONSUMER SERVICE COMPLEX, ALTERATION OR SUBSTANTIAL IMPROVEMENT

1. A new retail business, office or consumer service complex use, or an addition of more than 30% over the size of the buildings as existing at the time of the enactment of this amendment, or a Substantial Improvement, as defined in Article II., may be permitted as specified in Article V. Section B. Permitted Uses, provided that the Zoning Board of Review in accordance with this Ordinance, finds that the establishment of the same meets the standards & requirements of this section, and the intent of the use district in which it is located 9.
 - a) Multiple principle and/or accessory buildings may be permitted within a single lot, subject to the provisions of Article VIII. Section D. Planned Unit Developments. ¹⁰
2. The purpose of these regulations is to encourage the appropriate use of land for the development of new commercial areas taking into consideration the natural amenities of the site. No structure or structures shall be erected, added to or substantially improved as above unless in accordance with the standards set forth in this section.
3. In granting any such special use permit or in permitting any modification of the regulations set forth herein, the Zoning Board of Review may prescribe such conditions and safeguards, as further described in Article X. Special Conditions, as it may deem necessary to prevent nuisance to and promote harmony with nearby property. The disregarding of any such condition or safeguard, when made a part of the terms under which approval is granted shall be deemed a violation of this Ordinance.
4. A performance bond in the amount of 100% of the cost of on site improvements including roads, parking and travel areas, drainage and landscaping, but exclusive of buildings, and a certificate of occupancy shall be required.
5. A Performance Bond or cash surety in the name of the Town of Portsmouth and in the amount of 5% of the estimated cost of development shall be submitted to the Zoning Enforcement Officer prior to the start of construction. Such Performance Bond or cash surety must be maintained in effect until the requirements, in total or in phases, as determined by the Zoning Board of Review, are completed.
6. No proposed development shall be approved by the Zoning Board of Review unless it is served by an adequate sewerage system as approved by the R.I. Dept. of Environmental Management or public sewer, when the same becomes available, and that the sewer lines to

which it shall be connected, have adequate capacity to carry the additional effluent created by the development. Should the lines be determined to be inadequate, only such portion of the development as can be accepted by the sewer lines, shall be approved for development provided it meets all other requirements of this Zoning Ordinance.

- a) In the event that a private sewerage treatment plant is to be constructed, it shall be of a type approved by the State of Rhode Island Department of Environmental Management and it shall meet the standards of all Federal and State Legislation regarding water pollution control before a building permit may be issued.
7. In granting a special use permit for a development under this section the Zoning Board of Review shall, immediately upon receipt of an application hereunder, refer the site plan and related documents to the Portsmouth Planning Board for review and advice, per the stipulations of Article XI. Development Plan Review. Plans shall also be referred to the Design Review Board review and advice, per the stipulations of Article XI. Development Plan Review.
 8. The Zoning Board of Review shall require that the developer provide affidavits or statements signed by the Dept. of Environmental Management and the Coastal Resources Management Council that the proposed site does not violate any portion of the Wetlands Act or CRMC regulations prior to final approval, plus permits for curb cuts and connections into State road drainage systems, if applicable.
 9. Application shall include eleven (11) full sets of building and site drawings including, but not limited to, sewerage, other utilities, topographical plans, plumbing, heating and electrical plans, etc., as set forth below, and shall, as a condition precedent to the granting of said special use permit, require full adherence to said plans without deviation at any later construction date. The site plan shall conform to the development standards set forth in paragraph 10 below and shall contain the following:
 - a) A location map showing the location of the proposed site in relation to the Town of Portsmouth.
 - b) A plot plan showing the entire area to be developed as well as any abutting land under control of the applicant or owner of the land shown on the plan, and all parcels within 500 feet of proposed development ¹¹.
 - c) The site plan shall:
 - (1) Be drawn at a scale of 1" = 40' and be 32" long and 22" wide and contain a north arrow in the upper left corner (a Master Plan could be of other scale).
 - (2) Contain a title block in the lower right corner, including the name of the surveyor, designer, and engineer, the name of the development, owner and applicant if other than the owner, the date and scale, the acreage and square footage of the development.
 - (3) Show both existing and proposed contours at two (2) foot intervals, by the use of solid and dotted lines.
 - (4) Show size and location of all underground utilities within and abutting the site.

- (5) Show location and width of all proposed vehicular and pedestrian interior ways.
 - (6) Show location and number of spaces of proposed parking.
 - (7) Show location of all proposed buildings by type
 - (8) Show location and size of all proposed utilities, as approved by the installing authority.
 - (9) Show location and type of retention/erosion control areas if necessary to meet drainage requirement.
 - (10) Show location of all monuments.
 - (11) Show the names of all abutters as determined from the most recent tax list.
 - (12) Show the proposed treatment of all open spaces
 - (13) Show on a separate sheet building elevations.
 - (14) Show on a separate sheet preliminary layout of building interiors.
- d) Submittal shall also include items required in Article IX Section D. Design Review Standards, as applicable. ¹²

The above elements may be shown on separate sheets.

10. DEVELOPMENT STANDARDS

All developments proposed under this Section shall conform to the following standards:

- a) Minimum Frontage 110'
- b) Minimum Front Yard 30'
- c) Minimum Side Yard 25'
- (1) Driveways may not be counted as side yards.
- d) Minimum Rear Yard 30'
- e) Maximum Lot Coverage by Buildings 25%
- f) Maximum Building, parking and travelway coverage: 70%
85% in the Town Center District ¹³
- g) Due to the wide range of soil content in the Town of Portsmouth, no on site sewerage system shall be considered completely adequate without attention being given to the existing soil analysis map as prepared by the U.S. Dept. of Agriculture Soil Conservation Service. No opinion pertaining to the adequacy of the proposed system can be given without written evidence of on-site soil exploration tests as required by the R.I. Dept. Of Environmental Management. On site sewerage systems shall be approved by the Rhode Island Dept. of Environmental Management.
- h) Maximum Building Height: 2 1/2 Stories, not to exceed thirty-five (35) feet.
- i) Drainage
The developer shall provide for adequate drainage and shall further provide that the rate of runoff from the property shall not increase during construction or after completion of the development to the detriment of surrounding properties. If the retention of water is deemed necessary, then the retention areas

shall be provided prior to construction of any buildings or the surfacing of any areas. The engineer shall submit on separate sheets all computations in determining rates of runoff and shall base all calculations on a ten (10) year storm frequency using the TR-55 method for determining total storm water runoff. These computations shall be prepared by an engineer registered in the State of Rhode Island and he shall affix his seal to the required documents.

j) Sewage System

Public sanitary sewers shall be designed so as to ensure a self-cleaning velocity of not less than two and one half (2.5') feet per second nor more than 10' per second. Computation of sewage and sewage flow calculation shall be submitted.

k) Water

Computation of water usage shall be submitted and a statement of water availability shall be submitted. Written evidence of permission to connect to a public water supply shall be delivered to the Building Inspector prior to issuance of a building permit.

l) ⁱⁱ

m) Open space shall be provided in appropriate places and every effort shall be made to preserve wooded areas or other site amenities.

n) All interior roadways and parking areas shall be constructed in accordance with the "construction standards for streets" contained in Land Development and Subdivision Regulations of the Town of Portsmouth. ¹⁴

o) Access and Egress

There shall be not more than one entrance and one exit for every 500 feet or less of frontage. Said entrance and exit shall meet the requirements of the State of Rhode Island Department of Roads and Bridges and the Portsmouth Police and Highway Departments.

p) Acceptable engineering standards shall prevail where no standards are specified.

q) Fire lanes shall be provided for and approved by the Fire Dept.

r) Outdoor Display Areas. Exterior display areas shall be permitted only where clearly depicted on the approved site plan. All exterior display areas shall be adequately separated from motor vehicle routes by a physical barrier visible to drivers and pedestrians. Display areas on building aprons must maintain an adequate minimum walkway width between the display items and any vehicle drives. ¹⁵

Merchandise may not be displayed or stored in parking areas or on sidewalks adjacent to façade walls, except in screened display, sales, and storage areas, except short term seasonal events as approved by the Building Inspector. ¹⁶

Display, sales, and storage areas, such as nursery departments, must be enclosed by screening with a solid base with a minimum height of three feet **under** a wrought iron or tubular steel fence (black or green vinyl coated only) with a minimum height of five feet. The screening may also be composed of materials and colors matching the main building. No merchandise other than trees may be visible above the screening from eye level at grade. ¹⁷

These provisions shall not be applicable where the sale of nursery and agricultural products are the principle use of the building. ¹⁸

11. The foregoing development standards including but not limited to parking, open space, building design and location and other standards set forth herein and in Article IX may be modified and/or varied by the Zoning Board of Review upon a finding that such modifications comply with the requirements set forth in Section A paragraph 4 herein.

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Effective October 15, 1997, Article VII Section G.10.1) is deleted. All parking requirements related to retail development are in Article IX. Deleted wording was: "Parking shall be provided for in accordance with Article IX. Section A. Parking. There shall be no parking within 25' of any lot line. Cross-section of travel and parking areas shall be provided on the site plan."

1 TC-C (Town Center Commercial) adopted October 27, 2004.

2 Adopted February 4, 2008

3 Adopted February 4, 2008

4 TC-C (Town Center Commercial) adopted October 27, 2004.

5 ARTICLE VII. Section A. 7. b) Amended August 10, 2004

6 TC-C (Town Center Commercial) adopted October 27, 2004.

7 TC-C (Town Center Commercial) adopted October 27, 2004

8 Effective October 15, 1997, Article VII Section F.5. is deleted. All parking requirements related to limited light industrial development are in Article IX. Deleted wording was: "Any and all parking, including parking for visitors, employees, or customers shall be "off street" and there shall be no less than one parking space for each person to be employed on a lot. All roads and parking areas shall have a minimum surfacing of asphaltic concrete or approved equivalent. Curbs shall be installed in all parking areas."

9 "and the intent of the use district in which it is located" adopted October 27, 2004.

10 Adopted February 4, 2008.

11 ", and all parcels within 500 feet of proposed development" adopted
October 27, 2004.

12 d) adopted October 27, 2004.

13 85% in the Town Center District adopted October 27, 2004.

14 Adopted October 27, 2004.

15 Adopted February 4, 2008.

16 Adopted February 4, 2008.

17 Adopted February 4, 2008.

18 Adopted February 4, 2008.

ARTICLE VIII. LAND DEVELOPMENT PROJECTS

Section A. APPLICABILITY

A project as provided for in the Zoning Ordinance as a Land Development Project, in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, Planned Unit Development and/or Residential Open Space Development, as defined herein, for residential, commercial, institutional, recreational, open space, and/or mixed uses shall be subject to the provisions of this section as a "Land Development Project."

Section B. PROCEDURE

1. Any land development project application referred to the Planning Board for approval shall be reviewed in accordance with the procedures and requirements established herein, including those for appeal and judicial review, whether or not the land development project constitutes a "subdivision," as defined herein, as well as the procedures and requirements established in Article VIII of the Zoning Ordinance. No land development project shall be initiated until a plan of the project has been submitted and approved by the Planning Board. The Planning Board shall have full review and approval authorities for land development project applications.
2. All land development projects shall be reviewed in accordance with procedures and regulations established for major subdivisions in Article VI of the Land Development and Subdivision Regulations.
3. The Planning Board may, at its option and at the applicant's sole expense, retain independent expert consultants to evaluate specific portions of the proposal.¹
4. In case of conflict between this article and the Land Development and Subdivision Regulations, the provisions of this article shall prevail.
5. In reviewing, hearing, and deciding upon a land development project, the Planning Board is empowered to allow zoning incentives within the project as provided for in the zoning ordinance, and is empowered to apply such special conditions and stipulations to the approval as may, in the opinion of the Planning Board, be required to maintain harmony with neighboring uses and promote the objectives and purposes of the comprehensive plan and zoning ordinance.

Section C. RESIDENTIAL OPEN SPACE DEVELOPMENT²

1. PURPOSE

a. Residential Open Space Development, as used herein, is the use of a parcel of land for residential purposes which allows (amended 2/23/04) smaller lots than would otherwise be permitted in the zoning district, provided that open space on the parcel is set aside for recreation, conservation, agriculture, and/or the preservation of sensitive or valuable features or structures. The overall residential density on the

Residential Open Space Development parcel may not exceed that which is otherwise permitted in the zoning district.

b. Residential Open Space Developments are intended to achieve the following:

- i) Maximize open space and encourage the preservation of features and sites that have natural, ecological, cultural, historical, agricultural, scenic, or other significant interest or value;
- ii) Facilitate the economical and efficient provision of necessary public streets and utilities, community facilities, recreation, and open space;
- iii) Encourage the development of harmonious, efficient, and convenient living environments and communities.

2. APPLICABILITY AND PROCEDURE

- a. Residential Open Space Developments (amended 2/23/04) shall be permitted in residential zoning districts R-20, R-30, R-40, and R-60, pending approval of the Planning Board per the procedures established in this article.
- b. The Planning Board shall not approve a Residential Open Space Development which in its determination will have a detrimental effect upon the natural characteristics of the parcel of land or on the property surrounding the parcel.
- c. No Residential Open Space Development shall be undertaken, nor any lots sold, nor any portion of such development constructed until a subdivision plan for such development has been approved by the Planning Board in accordance with the procedures established by:
 - 1) The Land Development and Subdivision Regulations for Major Land Development and Major Subdivision Review.
 - 2) The additional requirements for Residential Open Space Developments established in this article.
- d. Because it is considered in its entirety, a Residential Open Space Development shall be approved and developed as a whole, including all infrastructure and required open space, with phasing, if applicable, as approved by the Planning Board.

3. NUMBER OF PERMITTED LOTS

- a. The total building lot yield shown on the Conventional Yield Plan, submitted in accordance with Section 4 herein, shall determine the maximum number of lots permitted in the Residential Open Space Development.
- b. In the case of a parcel which is in two separate zoning districts, the maximum number of lots shall be the sum of the numbers which would be allowed in each by the Conventional Yield Plan.

4. SUBMISSION REQUIREMENTS

In addition to the submissions required as part of a major subdivision, the following submissions are required:

- a. Accompanying any Master Plan application for a Residential Open Space Development, the applicant shall submit a plan for a viable conventional subdivision (the "Conventional Yield Plan") on the parcel. The Conventional Yield Plan shall identify:
 - 1) the location of all developable land, as defined in Article IV, Section A, Subparagraph 4 of this ordinance, on the parcel; and
 - 2) the placement of housing lots, each of which meet the minimum lot size and frontage requirements of the base zoning district, on the parcel's developable land.

- b. At the time of the Master Plan Application, the applicant shall include an Open Space Use Plan which includes the following information about the parcel proposed for Residential Open Space Development:
 - 1) the location of all areas of undevelopable land on the parcel;
 - 2) the location of all unique features and sensitive natural areas, as defined in Section 7 of this article;
 - 3) the general location and area of all proposed open spaces;
 - 4) the general proposed use(s) of the open space;
 - 5) existing ground cover of open space areas;
 - 6) areas of open space from which existing vegetation will be removed or altered and areas which are proposed to be disturbed or otherwise graded, excavated, or altered from their existing natural state;
 - 7) generalized proposals for the regrading, revegetating, and/or landscaping of proposed disturbed areas;
 - 8) the location of areas proposed to be left in their existing natural states without any disturbance;
 - 9) the location of significant views into and/or out of the site.

- c. At the time of the Preliminary Plan Application, the applicant shall include in the Proposed Conditions Map(s) the following information:
 - 1) The approximate footprints of all houses. For this purpose, all footprints shown must be at least 2,100 square feet including a house and two car garage, an approved septic system location, and a private well, if applicable.
 - 2) The configuration and placement of houses, lots, and septic systems. This configuration must demonstrate that all of the dimensional requirements for Residential Open Space Developments, as established by Section 5 of this Article, will be met by every house and lot.

- 3) The location of access points to Common Lands, as required by Section 7 D of this Article.
- 4) More detailed specifications of the Open Space Use Plan required at the time of Master Plan Review, including:
 - i. the location of all areas of undevelopable land on the parcel;
 - ii. the location of all unique features and sensitive natural areas, as defined in Section 7 of this article;
 - iii. the exact location and area of all proposed open spaces;
 - iv. the proposed use(s) of the open space;
 - v. the existing ground cover of open space areas;
 - vi. the location of areas of open space from which existing vegetation will be removed or altered and areas which are proposed to be disturbed or otherwise graded, excavated, or altered from their existing natural state;
 - vii. specific proposals for the regrading, revegetating, and/or landscaping of proposed disturbed areas;
 - viii. the location of areas proposed to be left in their existing natural states without any disturbance; and
 - ix. the location of significant views into and/or out of the site.

5. DIMENSIONAL REQUIREMENTS FOR HOUSING

- a) The following table prescribes the minimum dimensional requirements for individual lots and for the placement of houses upon lots in a Residential Open Space Development:

Zoning District	Minimum Lot Size (square feet)	Front Setback (feet)	Rear Setback (feet)	Side Setbacks (feet)	Max.% Lot Coverage
R-20	17,000	30'	30'	15'	20%
R-30	17,000	30'	30'	20'	20%
R-40	17,000	30'	30'	20'	20%
R-60	25,000	30'	50'	50'	10%

Note: All setbacks above are the same as the base zoning district in which the parcel is located.

- b) Every lot in a Residential Open Space Development shall have a minimum road frontage of thirty-five (35) feet.

- c) The maximum lot coverage percentage shall be the lesser of the above and the requirements of overlay districts as provided per Article III of this ordinance.
- d) Any portion of a lot that is less than thirty-five (35) feet in width or depth shall not be counted toward the minimum lot size or setback requirements. This provision shall not apply to corners of lots.

6. DEVELOPMENT DESIGN AND LAYOUT

The design and layout of a Residential Open Space Development shall follow the provisions of the Land Development and Subdivision Regulations, Article X., Design and Improvement Standards, with the additional requirements set forth in this section. In cases of conflict, the requirements in this section shall supersede the requirements of the Land Development and Subdivision Regulations. The Planning Board shall determine on a case-by-case basis whether the design and layout of a proposed Residential Open Space Development are acceptable according to the provisions herein and per the Land Development and Subdivision Regulations.

a) Protection of Unique Features and Sensitive Natural Areas

The lots and dwelling units shall be sized and arranged in a way which maximizes adherence to the Site Design Criteria for Preservation of Unique and Natural Features, Land Development and Subdivision Regulations Article X, Section C, subparagraph 2. Said subparagraph sets forth criteria by which the Planning Board shall judge whether or not a proposed development will be able "to preserve the natural features of the site, to avoid areas of environmental sensitivity, and to minimize impacts and alteration of natural features, historic and cultural resources, and areas of scenic value which contribute to the town."

Residential Open Space Developments will limit housing lots to a smaller portion of the parcel than would a conventional development. They therefore have a greater opportunity to site those lots away from the following sensitive areas:

- 1) unique and/or fragile areas, including freshwater wetlands and coastal features;
- 2) significant trees or stands of trees, or other vegetative species that are rare to the area or are of particular horticultural or landscape value;
- 3) lands in the flood plain, as defined in Article II of the Land Development and Subdivision Regulations;
- 4) steep slopes in excess of twenty (20) percent grade as measured over a 10-foot interval unless appropriate engineering measures concerning slope stability, erosion, and resident safety are taken;
- 5) habitats of endangered wildlife, as identified on applicable federal or state lists;
- 6) historically significant structures and sites, as listed on federal or state lists of historic places;
- 7) agricultural lands;
- 8) timber production lands;
- 9) vegetated and/or forested buffers protecting sensitive environmental features.

b) Perimeter Development

In no case shall the minimum distance between any house in a Residential Open Space Development and the nearest lot line of an adjacent parcel outside the subdivision be less than the number of feet required by the zoning setback plus an additional fifty (50) feet.

c) Street and Open Space Parking Requirements

- (1) All streets in a Residential Open Space Development which are intended or required for dedication to the Town of Portsmouth shall be improved in accordance with the requirements and specifications contained in the Land Development and Subdivision Regulations.
- (2) Where development design creates streets which are likely never to become through roads, the Planning Board may allow the construction of narrower pavement widths than the minimum of twenty-eight (28) feet established by the Land Development and Subdivision Regulations Article X, Section D, Subparagraph 8. The Planning Board may vary road dimensional requirements from those established by the Land Development and Subdivision Regulations Article X, Section D. All streets within a Residential Open Space Development shall maintain a right-of-way width of no less than fifty (50) feet. Where narrower streets are permitted, the Planning Board may require sidewalks on one or both sides of the street.
- (3) Common parking spaces on Common Lands, as defined in Section 7, shall not be closer than twenty-five (25) feet from all property lines or street right-of-way lines. The Planning Board may require the provision of landscape materials, screen planting, fences, or other materials designed to provide a buffer between parking areas and adjacent streets or property.

7. COMMON LANDS AND OPEN SPACEa) Definitions

- (1) "Common Lands" shall be defined as all land on the parcel that is not included in building lots, paved roadway, and road rights of way. All Common Lands are subject to the provisions herein.
- (2) "Open Space" shall be defined as that portion of the Common Lands that meets the provisions of Developable Land Area, as defined in Article IV, Section A of this ordinance.

b) Minimum Open Space Size Requirements

- 1) In a Residential Open Space Development, a minimum percentage of the parcel's developable land must be open space. The minimum percentage shall vary by zone, according to the following table:

<u>Zone</u>	<u>% of Developable Land which must be Open Space</u>
R-20	10%
R-30	25%
R-40	35%
R-60	45%

- i. Where a parcel is located in two or more zoning districts, the overall percent open space required shall be based on the percent of the parcel located in each zone. The actual open space provided may be located in one or more of the zones.
- (2) Total open space in a Residential Open Space Development shall not be less than one acre.

c) Open Space Land Qualifications

- (1) Undevelopable land, per the definition of "Developable Land Area" in Article IV, Section A of this ordinance, may not count toward the minimum open space size requirement.
- (2) Land which has been deemed by the Planning Board to be disturbed from its natural state prior to final approval of the development as a result of soil-removal operations, harvesting of trees or other natural features or refuse disposal or other causes shall not count toward the minimum open space size requirement unless and until the land is restored to a condition which the Planning Board determines to be reasonable and appropriate to effect the purposes of this article. The Planning Board may grant final approval for a Residential Open Space Development subject to such restoration of the disturbed land, provided an appropriate performance bond is posted.
- (3) Areas proposed to fulfill the minimum open space size requirement shall not be excavated or regraded nor shall any disturbance be made to the natural contours of the land nor shall any existing natural vegetation be removed or any natural or man-made features altered in any way except as is needed for recreation or conservation purposes or for drainage facilities as specifically authorized by the Planning Board.

d) Size and Shape of Open Space

Open space shall be designed to provide maximum preservation and enhancement of natural areas. To the maximum extent possible, open space shall be preserved in compact shapes, and not as mere extensions of building lots.

- (1) To the maximum extent reasonably possible, open space parcels shall be contiguous with protected undeveloped land on adjacent parcels, in

order to make the open space part of a larger unified open space system.

- (2) To the maximum extent reasonably possible, open space parcels shall be located so as to be convenient to the dwelling units they are intended to serve. However, because of noise generated by some permitted uses, open space parcels shall be sited with sensitivity to surrounding development.
- (3) To the maximum extent reasonably possible, each group of house lots in a Residential Open Space Development shall be adjacent and accessible to the open space proportional to the number of houses in the development. (For example, if there are 100 houses in the development and each of four groups of lots contains 25 houses, about 25% of the open space shall be adjacent to each group.)
- (4) A minimal number of narrow strips of not less than 25 feet in width of Common Lands shall be permitted only as:
 - i. access corridors between residences, streets, and larger Common Lands parcels
 - ii. drainage areas
 - iii. buffers
- (5) Reasonable access to open space shall be made readily available to residents of the Residential Open Space Development.
- (6) The area of each parcel of open space designed for a permitted use or community facility shall be of such minimum size, dimensions, and characteristics as to be functionally useable for that use or facility.

e) Permitted Common Lands Uses

- (1) Permitted Common Lands uses are chosen because they preserve the land in its current state, which is consistent with the town's rural character. Only the following uses of the Common Lands shall be permitted, and use thereof shall be limited to the residents of the Residential Open Space Development.
 - i. Recreation
 - ii. Conservation
 - iii. Wildlife Management
 - iv. Agriculture, as permitted in Article V of this ordinance
 - v. Forest Management
 - vi. Utility lines, as a special use permit
 - vii. Drainage facilities and drainage easements
- (2) Common Lands may not be used for commercial or revenue-enhancing purposes, with the exception of agriculture and outdoor golf courses, but not including miniature golf or driving ranges, which may be provided for by permanent easement or long-term lease.
- (3) Any change of the proposed Common Lands uses must be approved by the Zoning Board of Review as a Special Use Permit.

f) Improvements to Common Lands

- (1) As a general principle, Common Lands not developed for community facilities should be left in their natural state.

- (2) The Planning Board may require a developer to make improvements such as removing dead or diseased trees, planting or thinning of trees or other vegetation, and grading or seeding.
- (3) The Planning Board may require special provisions for the maintenance of Common Land, private improvements, drainage systems, and utilities, including requirements for security, including a maintenance bond, as provided in Article X of the Land Development and Subdivision Regulations.
- (4) The Planning Board may require the installation of any of the community facilities permitted in subparagraph g of this section.
- (5) The Planning Board may allow improvements for agricultural uses, provided that ecologically sensitive land, drainage facilities, and other public improvements remain undisturbed and protected.

g) Procedures for Approval of Community Facilities in Common Lands

- (1) Community facilities to be constructed by the applicant shall be submitted as part of the overall Residential Open Space Development plan.
- (2) The construction of any community facilities subsequent to the approval of a Residential Open Space Development shall be considered as a Special Use Permit and reviewed by the Planning Board per the provisions of Article XI, Development Plan Review, of this ordinance. All community facilities shall be a part of the final submission plans approved by the Planning Board.
- (3) Subsequent to final plan approval but prior to the conveyance of at least fifty-one (51) percent of the lots, community facilities may only be permitted after the granting of a Special Use Permit per the provisions of Articles VII and XI of this ordinance.
- (4) Following the conveyance of at least fifty-one (51) percent of the lots, community facilities may only be permitted with the permission of the homeowners' association membership and after the granting of a Special Use Permit per the provisions of Articles VII and XI of this ordinance.

h) Design Criteria for Community Facilities in Common Lands

- (1) The Planning Board may permit the following types of community facilities to be developed in the Common Lands, consistent with the requirements of this ordinance:
 - i. Community Structures may include but are not limited to community meeting centers, community art centers, and amphitheaters.
 - ii. Active Recreational Community Facilities provide recreational or community group opportunities for Residential Open Space Development residents. They may include but are not limited to sports facilities, playgrounds, equestrian centers, pools, beaches, tennis courts, playing fields, and the minimum amount of parking required for these facilities.
 - iii. Passive Recreational Community Facilities promote human enjoyment of the natural environment. They may include but are not limited to nature parks, nature centers, nature trails, hiking trails, equestrian trails, wildlife observation towers or blinds, and educational displays.
 - iv. Structures Accessory to Conservation to promote environmental preservation and enhancement. They may include but are not

limited to nature preserves, wildlife habitat areas, wildlife nesting platforms or boxes, and wildlife feeders.

- v. Structures Accessory to Agriculture may include but are not limited to barns, greenhouses, and silos.
 - vi. Structures Accessory to Golf Courses may include necessary maintenance facilities for use exclusively on the course and a clubhouse, provided it does not serve food or beverage and is used exclusively for golfers.
- (2) In addition to the criteria for the granting of Special Use Permits as established by Article VII, Section A of this ordinance, the Planning Board shall consider the following:
- i. Any community facilities which are permitted in the Common Lands must conserve and enhance the natural features of the Common Lands having regarded their topography and unimproved condition.
 - ii. Community facilities shall be designed and located so as to be easily accessible and visible from public rights-of-way. All community facilities shall be accessible to the units in the Residential Open Space Development so that all development residents have ready access to, and use of, such facilities.
 - iii. In total, community facilities which create impervious surfaces shall not exceed twenty (20) percent coverage of the open space.
 - iv. Community facilities shall be located at least one hundred (100) feet from the nearest house.
 - v. Dimensional requirements for community facilities shall be the same as those established by this ordinance for the base zoning district of the Residential Open Space Development.

i) Deed Restrictions

Any lands dedicated for Common Lands shall contain appropriate covenants and deed restrictions approved by the Planning Board in consultation with the Town Solicitor and duly recorded in the land evidence records, ensuring that:

- (1) the Common Lands will not be further subdivided or developed in the future;
- (2) the Common Lands will remain open space;
- (3) appropriate provisions will be made for the maintenance of the Common Land; and
- (4) common Lands shall not be used for a commercial enterprise, with the exception of agriculture and outdoor golf courses, but not including miniature golf or driving ranges, as provided herein.

8. COMMON LANDS OWNERSHIP

Ownership of the Common Lands shall be vested in a legally constituted organization which shall be responsible for its use and maintenance. The Planning Board shall have the right to approve, modify, or reject the proposed form of ownership if, in its opinion, it does not adequately provide for controls over use and maintenance. As a minimum, the following standards of ownership and management shall be met:

- a) The Common Lands shall be separate and distinct lot(s) owned in common by all the landowners in the development. The deed to each house lot shall include a fractional interest in the Common Lands in an amount proportional to the number of house lots in the development. The deed shall also include all covenants, restrictions, or easements which shall

be imposed upon the use, management, or maintenance of the Common Lands in order to provide for the necessary control and requisite upkeep of the Common Lands, including requirements for liability insurance.

- b) The developer shall provide for and establish a homeowners' association which shall be responsible for the use, care, and maintenance of all Common Lands and any improvements thereon. Unless otherwise allowed by the Planning Board, membership in the homeowners' association shall be mandatory for all landowners within the Residential Open Space Development. The homeowners' association bylaws shall entitle the owner of each lot equal representation.
- c) For the purposes herein, the applicant or his successors or assigns shall have the same rights and responsibilities as the owners of individual lots.
- d) The Planning Board may permit the ownership of Common Lands by a public, quasi-public, or private non-profit organization qualified to maintain such Common Lands. In the event of the failure of a non-profit to maintain the Common Lands, ownership of the Common Lands shall revert to the homeowners' association.

9. REQUIRED CERTIFICATES OR DOCUMENTS

An applicant for a final plan approval of a Residential Open Space Development must submit, in addition to the materials required by Section 4 of this Article and Article X of the Land Development and Subdivision Regulations, the following certificates or documents for approval by the Planning Board:

- a) A development agreement to be executed between the developer and the town, to be recorded in the Land Evidence Records, stating:
 - i. That the owner or developer will construct the development and install improvements both public and private in accordance with the approved plan. Surety shall be posted to guarantee completion and compliance.
 - ii. That in the event of a failure of the applicant, lot owners, successors, or assigns to maintain any Common Lands, community facilities, landscaping features, or other required improvements, the Town may enter the development to perform the necessary maintenance work and assess the cost, including attorney's fees, to the applicant, lot owners, successors, or assigns.
 - iii. That individual lot deeds will include an undivided proportional interest in the Common Lands; that the obligation for maintenance of Common Lands and improvements thereto shall be imposed upon the owners of the lots in the development; and that the Town will not be requested to accept or maintain any portion of Common Lands or improvements thereto.
 - iv. That every owner of a lot within such development shall be deemed a member of the homeowners' association.

- v. That the restrictions set forth in this agreement shall run with the property and be binding upon the applicant, lot owners, heirs, successors, assigns or other receivers of the development and shall constitute a lien on the property in the development.
 - vi. Any other conditions required by the Planning Board.
 - vii. That uses of the Common Lands shall be only those permitted by Section 7 e of this article.
 - viii. That the development will meet all the requirements of this article.
- b) A perpetual easement and covenant to the Town over the Common Lands, prohibiting further development and imposing use restrictions upon the Common Lands.
 - c) A sample deed which includes or refers to a recorded document which stipulates all covenants, restrictions, or easements which shall be imposed upon the use, management, or maintenance of the Common Lands in order to provide for the necessary control and requisite upkeep of the Common Land, including requirements for liability insurance, and which states that each housing lot shall include an undivided proportional interest in the Common Lands. If not owned by the lot owners, documents specifying ownership of the Common Lands.
 - d) A declaration and a legal description of easements, deed restrictions and/or covenants running with the land in the development, and an instrument conveying any easements required as a condition of approval, which shall be recorded in the Land Evidence Records.
 - e) Copies of any proposed management policies.
 - f) All other procedural requirements or supporting material set forth in the Land Development and Subdivision Regulations not heretofore mentioned in this article, which are applicable to any Residential Open Space Development.
 - g) The following disclosures to buyers are required and must be approved by the Planning Board prior to final approval:
 - (1) A sample purchase and sale agreement which shall be used for the purchase of individual lots and dwellings. Such agreement shall include in conspicuous type the following: That the property is part of a Residential Open Space Development subject to Article VIII of the Portsmouth Zoning Ordinance; that the purchaser and subsequent owners of the property are subject to the requirements therein contained, as well as any conditions set by the Planning Board, which shall be enumerated; that the purchaser and subsequent owners of the property shall be required to be a member of the Homeowners' Association, shall be subject to the rules and regulations of such association, and shall be liable for any applicable assessment made by or against such association. The purchase and sale agreement shall further contain a statement by the seller that purchaser has been provided with a copy of the rules and regulations of the Homeowners' Association, copies of any management policies, copies of restrictions or covenants running with the land in the development, and a prospectus which shall be a summarization in layman's terms of the information contained in other documents.
 - (2) Copies of the documents creating the Homeowners' Association, the bylaws and the rules and regulations of the Homeowners' Association, any management policies or proposed management policies, copies of any restrictions or covenants running with the land in the development and a prospectus which shall be a summarization in layman's terms of the information contained in filed documents.

SECTION D. PLANNED UNIT DEVELOPMENTS ³**1. PURPOSE**

The purpose of this section is to provide a procedure for the evaluation and approval of integrated developments focused on planned employment uses, including industrial, light industrial, office and research and development uses, retail/service developments ⁴ marina and resort-style development, ⁵ and addressing the particular needs of marine trade uses.

The regulations are intended to foster developments which are compatible with surrounding areas and which incorporate buffers or transition areas to reduce potential negative impacts on single family residential areas. The regulations are intended to encourage a mixture of compatible uses to create a sustainable and attractive environment for a wide variety of trades and businesses. The regulations are intended to be flexible, to allow for innovative design techniques, accommodate unique land uses and encourage creative approaches to development issues.

A coordinated design approach with an emphasis on compatibility with the natural environment and surrounding land uses and the allowance of a sufficient mix of uses and accessory uses to create a self-contained or self-sustained development park is encouraged. Planning of a project and calculation of densities over the entire project rather than on an individual lot-by-lot basis is permitted. A coordinated design approach should: ⁶

- Break up the apparent mass and scale of large structures, as well as large paved areas, in order to ensure that such development is compatible with and does not detract from Portsmouth's character, scale, and sense of place;
- Help integrate large-scale development with its surroundings;
- Promote and facilitate a safe and comfortable pedestrian scale environment;
- Encourage a mixture of uses and sizes of structures; and
- Reduce the visual impact of large areas of parking.

The regulations are intended to be flexible, to allow for innovative design techniques, accommodate unique land uses and encourage creative approaches to development issues. It is anticipated that public officials will have considerable involvement in determining the nature of the development through the development plan review process which will include consideration and application of aspects of both subdivision and zoning regulations. ⁷

Where the requirements of any part of this section may conflict with any other section, this section shall prevail. ⁸

2. APPLICABILITY AND PROCEDURE

- a) Planned Unit Developments are permitted in Districts as set forth in Article V, and Article III Section K (redevelopment district) ⁹ of this ordinance with the approval of, and subject to conditions and restrictions imposed by the Planning Board pursuant to this section.
- b) No Planned Unit Development shall be undertaken, nor shall any lots therein be sold, nor any portion of such development be constructed

until a plan for such development has been approved by the Planning Board in accordance with the procedures established by:

- (1) The Land Development and Subdivision Regulations of the Town of Portsmouth for Major Land Development and Major Subdivision Review.
 - (2) Additional procedures and requirements set forth herein for Planned Unit Developments.
- c) Compatibility and interrelation of uses within the Planned Unit Development and coordination of traffic, utilities, parking, storm water management, security, sewage disposal, storage, open space, infrastructure and other needs, as well as the entire development's impact on the surrounding area and roadways mandates that the development be considered in its entirety and approved, if appropriate, as a whole and developed as a whole. Phasing of construction may be permitted or required by the Planning Board.
- d) In granting a planned unit development under this section the Planning Board shall, immediately upon receipt of an application hereunder, refer the site plan and related documents to the Design Review Board, as well as to the Portsmouth Redevelopment Agency for proposals in the Redevelopment District, for review and advice, per the stipulations of Article XI. Development Plan Review.¹⁰ The Redevelopment District Performance Standards shall be used to help evaluate proposals in the Redevelopment District.¹¹
- e) "Performance Standards for Planned Unit Developments", adopted by the Planning Board, hereinafter referred to as "Performance Standards", shall be utilized, as applicable, for evaluating Planned Unit Development proposals.¹² The Redevelopment District Performance Standards shall be used to help evaluate proposals in the Redevelopment District.

3. MINIMUM LAND AREA

- a) A Planned Unit Development shall consist of not less than 200,000 square feet, except Planned Retail/Service Developments which shall consist of not less than 100,000 square feet¹³, or 80,000 square feet in the Town Center District¹⁴, or 20 acres in the Redevelopment District¹⁵ of developable land area which may be subdivided into lots as set forth in section 6 hereof.
- b) Once a planned unit development has been approved, all land area shown on the plan submitted as part of said development, including those designated as reserved for future development, shall be dedicated to the development and may not be withdrawn from said development plan or devoted to any other use without the express consent of the Planning Board. The Board may allow subsequent withdrawal of land from a development, after hearing, when such withdrawal will not violate the purpose and intent of this ordinance, impair the previously approved plan of coordinated development or deprive the public or the development of benefits or amenities in exchange for the provision of which the applicant was previously granted zoning incentives or modifications.

4. USES

a) USES - GENERALLY ¹⁶

- (1) Uses are categorized as "permitted", "conditional", and "prohibited". (Consideration of "conditional" is similar to that for special use permits in zoning, but adds a requirement that the use fit the intent of the particular PUD.)
- (2) Designation as a conditional use does not constitute an authorization or an assurance that such use will be permitted. Rather, each application for a conditional use shall be evaluated as to its internal consistency with the intent of the proposed PUD, its probable effect on the intent of said development, the adjacent property, the neighborhood, and on the community and may be approved or denied as the findings indicate appropriate.
- (3) Nothing herein contained shall preclude the Planning Board from granting multiple conditional uses for a proposal or to condition the granting of one or more conditional uses upon the implementation or completion of one portion of a project, a master plan for which is submitted at the time of the application for a planned unit development. (See also Article X. Special Conditions.)
- (4) Items to be considered when granting a conditional use include, but are not limited to, the following:
 - (i) Conformance with the Performance Standards for Planned Unit Developments, and/or the Redevelopment District Performance Standards, as applicable.
 - (ii) The desired use will not be detrimental to the intent of the planned unit development or to the surrounding area;
 - (iii) It will be compatible with existing and proposed uses within the planned unit development, as well as neighboring land uses.
 - (iv) It will not create a nuisance or a hazard in the neighborhood.
 - (v) Adequate protection is afforded to the surrounding property by the use of open space and planting, or by decorative fencing, per the Performance Standards;
 - (vi) Safe vehicular access and adequate parking are provided;
 - (vii) Control of noise, smoke, odors, lighting and any other objectionable feature is provided;
 - (viii) Solar rights of the abutters are provided for;
 - (ix) The proposed conditional use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth, and/or the Redevelopment District Performance Standards¹⁷, as applicable;
 - (x) The health, safety and welfare of the community are protected.
 - (xi) It is consistent with the Purpose of Design Standards set forth in Article IX. Section D. and/or the Redevelopment District Performance Standards, as applicable.
 - (xii) Shared parking or joint use is encouraged, and for some uses required, where it is likely that occupants of a vehicle would

visit more than one use within a development before departing. The Planning Board may, at its option, waive certain requirements of Article IX. Section A. 7 b), provided adequate parking is provided.

- Applicant shall demonstrate how the development will utilize shared parking, including calculations, utilizing the parking requirements of Article IX, Section A.

(5) The Planning Board may, at its option, impose special conditions on any use, as further defined in Article X. Special Conditions, wherein for these purposes the term Planning Board is substituted for the term Zoning Board of Review.

b) **MIXED USES**

(1) Nothing contained in this ordinance shall be construed to prevent or discourage the institution or maintenance of two or more uses on any one lot or within any one building in a planned unit development and a mix of compatible uses are to be encouraged.

c) **PLANNED CORPORATE DEVELOPMENT**

(i) Notwithstanding any other provision of this ordinance, all office, management, regulatory and light industrial uses, (but excluding mass storage of fuel), are permitted in a Planned Corporate Development, including but not limited to:

(ii) manufacturing from previously prepared materials, of non-hazardous, finished products or parts and including processing, fabrication, assembly, treatment, packaging, sale or distribution, incidental storage of such products or parts and research and development, but excluding basic industrial processing, provided such use produces no noise, heat or glare perceptible at any lot line and emit no vibration, smoke, dust, dirt, toxic or offensive odors or gases.

(iii) business, financial, or professional offices, medical, dental, psychiatric, or other health service offices or clinics, including laboratories.

(iv) research and development facilities.

(v) radio, television, or recording studios.

(vi) antennas and communications towers.

(vii) public or private utilities including telephone exchanges.

(viii) printing, binding, publishing, graphic arts, and related trades.

(ix) plumbing, electrical, carpentry shop or other similar service or repair establishment.

(x) day care center.

(xi) public or private trade schools, (but not those including vocational of trade skills in automotive, construction, metallurgical, chemical or similar industrial operations, operation of heavy equipment or vehicle repair).

(xii) restaurants without drive through facilities provided that the gross floor area shall not exceed 10% of the development's gross floor area.

- (xiii) indoor entertainment and recreational facilities in a suitably sound insulated structure.
- (xiv) catering or food processing or preparation at wholesale.
- (xv) wholesale storage in an enclosed and roofed structure.

d) **PLANNED INDUSTRIAL DEVELOPMENT**

(1) Notwithstanding any other provision of this ordinance, all industrial uses, (but excluding mass storage of fuel), are permitted in a Planned Industrial Development, including but not limited to:

- (i) processing and manufacturing from raw or extracted materials, of non-hazardous finished or unfinished products or parts and including processing, compounding, stamping, fabrication, assembly, treatment, packaging, sale or distribution, and incidental inside storage of such products or parts.
- (ii) research and development facilities.
- (iii) business, financial or professional offices.
- (iv) public or private utilities including telephone exchanges.
- (v) printing, binding, publishing, graphic arts, and related trades.
- (vi) plumbing, electrical, carpentry shop, or other similar service or repair establishment.
- (vii) day care center as an accessory use serving employees of a businesses within the development.
- (viii) public or private trade schools offering vocational or trade skills including automotive, construction, metallurgical, chemical, or similar industrial operations, operation of heavy equipment or vehicle repair.
- (ix) restaurants without drive through facilities provided that gross floor area may not exceed 10% of the development's gross floor area.
- (x) trucking terminals.
- (xi) antennas and communications towers.
- (xii) wholesale business and storage in an enclosed and roofed structure.
- (xiii) commercial parking structure.
- (xiv) bottling of beverages.
- (xv) laundries and dry cleaning plants.
- (xvi) paint and auto body shops provided all work is carried on within the building.
- (xvii) construction business and storage of construction equipment.
- (xviii) extractive industries and earth removal.
- (xix) ship building and repair.

e) **PLANNED MARINE TRADE DEVELOPMENT**

(1) Notwithstanding any other provision of this ordinance all marine trade

uses and multifamily residential uses subject to conditions and limitations prescribed herein, are permitted in a Planned Marine Trade Development, including but not limited to ¹⁸:

- (i) design, manufacture, repair, renovation, or rebuilding of commercial, military, government or recreational boats.
- (ii) support industries for boat manufacture or repair, including the design, manufacture, repair, and installation of all boating systems and accessories.
- (iii) marinas and accessory uses thereto.
- (iv) stores for sale of marine supplies and associated items, including boats and trailers.
- (v) restaurants without drive through facilities, provided that gross floor area may not exceed 10% of the development's gross floor area.
- (vi) commercial parking structures.
- (vii) research and development facilities.
- (viii) antennas and communications towers.
- (ix) storage in an enclosed and roofed structure.
- (x) outdoor storage of boats, and other equipment utilized in boat storage such as cradles, but not materials, parts, supplies, etc., unless such items are in the process of installation or other active use in the repair or service of boats.
- (xi) Schools.
- (xii) day care centers.

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f) **PLANNED MARINA VILLAGE DEVELOPMENT (PMVD)**²⁰

(1) Proposed uses not listed below may be presented to the Planning Board for review. Such uses shall be evaluated by the Planning Board for similarity to below listed uses and consistency with the intent of the PUD. The Planning Board may approve or deny the proposed use, or may approve the proposed use subject to conditions.

(2) **Permitted uses:** The following uses are appropriate for the Planned Marina Village Development (PMVD) including:

(i) Marinas including sale of boats and related supplies, fueling and pumpout facilities, minor boat repair and servicing, with shared or joint use parking required.

(a) A marina is a required element of a PMVD, shall be of proportional size and integral to the land-side development, and shall be integrated and phased with the development as a whole.

(ii) Residential limited to condominiums, apartments, multi-family homes, and attached townhomes, provided that at least ten percent (10%) of all units within each phase of the development are "affordable" according to the terms of the Town's Low and Moderate Income Housing Plan. Such Affordable Units shall be provided by bedroom size in the same proportion as the applicable phase of the development. If provided for in this or another Town ordinance

relating to low and moderate income housing, such units may be provided off-site or by payment in lieu of according to the terms of such ordinance.

- (iii) Retail and service businesses not to exceed 5,000 sq. ft. each
 - (iv) Restaurants not to exceed 5,000 sq. ft. each
 - (v) Small offices and clinics with public service component encouraged on ground floor, not to exceed 5,000 sq. ft. each
 - (vi) Civic uses; public services uses encouraged on ground floor
 - (vii) Daycare centers.
 - (viii) Parks and other small scale public spaces.
 - (ix) Lodging such as hotels, bed & breakfasts, and spas.
 - (x) Short-term or seasonal outdoor storage of boats and boating equipment directly associated with the development, provided that proper screening from the street and adjacent properties is provided.
 - (xi) Active outdoor recreational facilities such as golf courses and tennis courts.
 - (xii) Yacht club, country club, and other recreational facilities and accessories.
- (3) **Conditional uses:** The following uses may be allowed in a PMVD as conditional uses:
- (i) Large scale retail and service businesses in excess of 5,000 sq. ft. each
 - (ii) Large scale Office - second floor and above only, in excess of 5,000 sq. ft. each
 - (iii) Places of worship and assembly with shared or joint use parking required
 - (iv) Large Scale institutional uses (public service uses only) in excess of 5,000 sq. ft. each
 - (v) Laboratories and medical research as a principal use (not allowed on ground floor)
 - (vi) Short-term open storage of boats and other equipment utilized in boat storage that is not directly associated with the marina.
 - (vii) Commercial parking structures
 - (viii) Restaurants in excess of 5,000 sq. ft. each, shared or joint parking required.
 - (ix) Drive through facilities as an accessory to a primary use.
 - (x) Storage in an enclosed and roofed structure
 - (xi) Antennas and communication towers

- (xii) Single family detached units, limited to 10% of the total units in the development.

(4) **Prohibited uses:** The following uses are not allowed within a PMVD:

- (i) Automotive uses including gas stations, auto sales, open storage, parts or maintenance, or car wash.
- (ii) Self Storage or Long-term storage facilities
- (iii) Outdoor storage, except as provided in permitted and conditional uses above.
- (iv) Kennels (exterior yards)
- (v) Food manufacturing or processing except that consumed on site.
- (vi) Manufacturing and Industrial uses.
- (vii) Major boat repair, boat painting facilities and other operations causing cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke or vapor.
- (viii) Free-standing drive through facilities.

g) **PLANNED RESORT DEVELOPMENT (PRD)**²¹

- (1) Proposed uses not so listed below may be presented to the Planning Board for review. Such uses shall be evaluated by the Planning Board for similarity to below listed uses and consistency with the intent of the PUD. The Planning Board may approve or deny the proposed use, or may approve the proposed use subject to conditions.

(2) **Permitted uses:** The following uses are appropriate for the Planned Resort Development (PRD) including:

- (i) Retail and service businesses not to exceed 5,000 sq. ft. each
- (ii) Restaurants not to exceed 5,000 sq. ft. each.
- (iii) Civic uses; public services uses encouraged on ground floor
- (iv) Daycare centers
- (v) Residential including single-family dwellings, condominiums, apartments, multi-family homes, and attached townhomes.
- (vi) Parks and other small scale public spaces
- (vii) Lodging such as hotels, bed & breakfasts, and spas.
- (viii) Short-term or seasonal storage outdoor storage of boats and boating equipment directly associated with the development, provided

that proper screening from the street and adjacent properties is provided.

(ix) Active outdoor/indoor recreational facilities such as golf courses and tennis courts.

(x) Yacht club, country club, and other recreational facilities and accessories.

(3) **Conditional uses:** The following uses may be allowed in a PRD as conditional uses:

(i) Marinas including sale of boats and related supplies, fueling and pumpout facilities, minor boat repair and servicing, shared or joint parking required.

(ii) Places of worship and assembly, with shared or joint use parking required

(iii) Commercial parking structures

(iv) Restaurants in excess of 5,000 sq. ft. each, shared or joint parking required

(v) Drive through facilities as an accessory to a primary use.

(vi) Storage in an enclosed and roofed structure

(vii) Antennas and communication towers

(viii) Satellite parking facilities

(4) **Prohibited uses:** The following uses are not allowed within a PRD:

(i) Automotive uses including gas stations, auto sales, open storage, parts or maintenance, or car wash.

(ii) Self Storage or Long-term storage facilities

(iii) Outdoor storage, except as provided in permitted and conditional uses above.

(iv) Kennels (exterior yards)

(v) Food manufacturing or processing except that consumed on site.

(vi) Manufacturing and Industrial uses

(vii) Large Scale office uses in excess of 5,000 sq. ft. each

(viii) Large Scale institutional uses in excess of 5,000 sq. ft. each.

(ix) Laboratories and medical research.

(x) Major boat repair, boat painting facilities and other operations causing cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke or vapor.

(xi) Free-standing drive through facilities.

h) **PLANNED RETAIL/SERVICE DEVELOPMENT** ²²

- (i) Retail business and consumers services.
- (ii) Business, financial, or professional offices, medical, dental, psychiatric, or other health service offices or clinics, including laboratories.
- (iii) Radio, television, or recording studios.
- (iv) Printing, binding, publishing, graphic arts and related trades.
- (v) Plumbing, electrical, or carpentry shop, or other similar service or repair establishment.
- (vi) Day care Center.
- (vii) public or private trade schools, (but not those including vocational or trade skills in automotive, construction, metallurgical, chemical or similar industrial operations, operation of heavy equipment or vehicle repair.
- (viii) Restaurants.
- (ix) Indoor entertainment and recreational facilities in a suitably sound insulated structure.
- (x) Catering or food processing or preparation.
- (xi) Stores for sale of marine supplies and associated items, including boats and trailers.
- (xii) Commercial parking structure.
- (xiii) Schools.
- (xiv) Multi-family housing provided said residential component, including required parking, open space and amenities, shall not exceed 35% of the developable land area of the total development. (amended 2003-07-14)
 - 1. Except that, in the Redevelopment District, multi-family housing shall not exceed 25% of the developable land; of which at least 10% must be affordable Low and Moderate Income Housing.²³
- (xv) In the Town Center District, the more restrictive of the above list of uses and the uses permitted in Article V under TC shall apply.²⁴

5. SUBMISSION REQUIREMENTS

In addition to the submissions required as part of a major subdivision, the following submissions are required:

(a) At the time of the Master plan application, the applicant shall include the following on the plan or in the supporting materials:

- (1) location, proposed size and height of all buildings;
- (2) proposed general use category of each lot, building or portion thereof, i.e. office, manufacturing, retail, residential, public, semi public, light industrial, industrial, etc.;

- (3) general parking plan including arrangements for shared parking or parking removed from the building to be served;
- (4) arrangements or reservations for expansion onto or connection to adjoining properties, including utility and facility connections, traffic connections, etc.;
- (5) designation of all areas reserved for future development;
- (6) all areas proposed to be reserved for open space or recreation;
- (7) a description of all zoning incentives and/or modifications sought and justifications therefore.

(b) At the time of the preliminary plan application the applicant shall include the following on the plan or in the supporting materials:

- (1) building elevations and preliminary general layout of building interiors;
- (2) location and number of proposed parking spaces with calculations of parking needs as set forth in Article IX hereof;
- (3) location of all vehicular and pedestrian ways, designation of private and public ways and provisions for use and maintenance of all private ways;
- (4) as to residential units, building and site plans conforming to the requirements of Article VII, Sec. C(9)(c);
- (5) as to retail and service developments, building and site plans conforming to the requirements of Article VII, Sec. G(9)(c). (amended 2003-07-14);
- (6) for each lot or building, a schematic setting forth total land area, frontage, lot coverages by impervious surface and buildings, building height and setbacks, available parking and loading areas with contrast to allowed maximum and minimum requirements.
- (7) For Planned Retail/Service Development proposals, submissions shall also include those items shown in Article IX. Section D. Design Review Standards,²⁵ and/or the Redevelopment District Performance Standards²⁶, as applicable.

6. DEVELOPMENT/PERFORMANCE STANDARDS

a) General Intensity Regulations ²⁷

	Min. lot size	Min. frontage *	Min. front setback	Min. side setback	Min. rear setback	Max. Lot/Bldg coverage	Max. Bldg. height
<u>PID</u>	40,000	200	60	30	50	40%	40' **
<u>PCD</u>	40,000	200	50	30	50	40%	40' **
<u>PMTD</u>	30,000	110	30	20	30	40%	40' **
<u>PMVD</u>	20,000	110	30	15	20	50%	40' ***
<u>PRD</u>	20,000	110	30	15	20	50%	40'
<u>PRSD</u>	20,000	110	30	25	30	25%	35'

<u>PRSD in TC zone</u> <u>28</u>	<u>20,000</u>	<u>110'</u>	<u>5'</u>	<u>15'</u>	<u>20'</u>	<u>35%</u>	<u>35'</u>
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Maximum Building, parking and travelway coverage: 70%
85% in the Town Center District (same as Spec. Use Permit)²⁹

- * *Shown for reference purposes:*
- PID = Planned Industrial Development*
- PCD = Planned Corporate Development*
- PMTD = Planned Marine Trade Development*
- PMVD = Planned Marina Village Development*
- PRD = Planned Resort Development*
- PRSD = Planned Retail/Service Development*
- PRSD in Town Center Zone corrects an earlier omission.*

(1) The Board shall have the power to modify the above provisions to a degree not to exceed ten (10%) percent in the event the Board finds that granting such modification allows the applicant to provide other amenities or features in furtherance of the purposes and intent of this section such as, but not limited to, preservation of existing trees, groves, water bodies or scenic points; public access to the coastline, coordinated access to utilities, facilities and roadways by neighboring property owners, or protection of proximate residential areas or, if necessary, to accommodate the particular need of a use allowed hereunder.

* Frontage may be on private streets approved pursuant to section 6(b)(1)(e) hereof. Frontage on any street may be waived in its entirety in special circumstances in which provision of such frontage would result in an inefficient use of land or development resources without countervailing benefit to the public or development and adequate vehicular and pedestrian circulation, off street parking and loading and perpetual routine and emergency access are provided.

** In Planned Marine Trade Developments, if the applicant demonstrates a functional need for additional height the maximum height limit shall be sixty (60) feet. Notwithstanding that provision however, in all districts the maximum height limit for any structure containing a residential dwelling unit shall be 35 feet.

*** In Planned Marina Village Developments ³⁰

In order to encourage smart growth and sustainable development patterns integrating architectural and design interest in Planned Marina Village Developments, the maximum height of residential or mixed use structures may be increased to sixty (60) feet to include a maximum of four stories of residential and/or commercial use plus one story of parking, provided that the following objectives as defined in the Portsmouth Comprehensive Community Plan, West Side element are met:

- Connectivity with transit and alternate transportation modes;

- Mixed Use Development;
- Maximize preservation of coastal vistas and open space areas;
- Maximize public recreation and coastal access
- At least 10% affordable Low and Moderate Income Housing is provided per the provisions of Section D.4.f) above.
- Shared Use Parking;
- Public infrastructure improvements;
- Remediation and reuse/redevelopment of former underutilized and/or environmentally challenged sites.

In Planned Marine Trade Developments and Planned Retail/Service Developments (amended 2003-07-14) the minimum developable land area per unit for multi family housing shall be:

	Served by onsite sewer system effluent discharged into an on site absorption field	Served by sewer system plant or public sewer system with effluent discharged into an off-site absorption field
1 bedroom**	10,000 square feet	7,500 square feet
2 bedroom**	16,000 square feet	11,000 square feet
3 bedroom**	20,000 square feet	15,000 square feet
each additional bedroom**	6,000 square feet	4,000 square feet

**any room in excess of 69 square feet, such as a den, playroom, study, library, etc. is to be considered a bedroom for the purposes of this section

In Planned Marina Village Developments (PMVD) the minimum developable land area per residential units shall be thirty (30) units per acre.³¹

In Planned Resort Developments (PRD) the minimum developable land area per residential unit shall be two (2) units per acre.³²

(2) In all districts, off-street parking provided and maintained as paved/impervious surface shall be counted as part of the allowable lot coverage as defined and specified herein and in Articles IV of these regulations.³³

(3) Parking areas composed of pervious surfaces are encouraged for all land uses and lots, unless there are overriding environmental limitations, and may be provided to meet part of any required parking spaces on a lot. 20% of such pervious surfaces which provide for grass surface shall be counted as part of the overall allowable lot coverage; otherwise 60% of such pervious surfaces shall be counted.³⁴

a) Pervious surfaces shall not be used in travel lanes, fire lanes, or within 60 ft. (2 parking lanes plus aisle) of any building except for employee parking.

(4) Measures that shall be considered to reduce the amount of impervious surfaces in all proposed parking lots include:³⁵

- Provide pervious parking stall surfaces
- Provide pervious overflow parking
- Provide pervious snow-storage space

- Conserve existing natural areas, including trees on-site
- Minimize clearing to the extent practicable while retaining access, sight distances, and safe vehicle flows.

Minimum side and rear building setbacks for a Planned Retail/Service Development not in the Town Center zone may be increased by the Planning Board for developments that abut residential zones and contain any building greater than 25,000 SF gross area. Increase in such setbacks shall be intended to mitigate negative impacts on abutting properties, and shall be based upon:³⁶

1. size and intensity of proposed use;
2. relative topography of the proposed development to adjacent residential development;
3. placement of parking, loading and service areas;
4. landscaped and/or solid screening.

In no case may the minimum distance between any principle building in a PUD and the nearest lot line of an adjacent parcel outside the PUD and located in a residential district, be less than the rear yard setback required in Article IV. for the respective, adjacent residential district.³⁷

(b) Design and Layout

(1) Streets and Ways

- a. Arrangement - arrangement of buildings should provide more economy of roads and internal parking than normally associated with conventional development. All streets and ways, public and private, shall be coordinated with each other and designed and laid out in accordance with the appropriate requirements and specifications contained in Article X, Sec. D of the Town of Portsmouth Land Development and Subdivision Regulations.
- b. Public streets and ways - all streets which are intended or required to be dedicated to the Town of Portsmouth as public streets shall be constructed in accordance with Article X, Sec. E of the requirements and specifications contained in the Town of Portsmouth Land Development and Subdivision Regulations.
- c. Private streets and ways - all streets and ways which are intended to remain under the control of private entities shall be constructed in accordance with the requirements and specifications contained in Article X. Sec. E. of the Town of Portsmouth Land Development and Subdivision Regulations.
- d. Standards of design and construction for roadways, either public or private, within a planned unit development may be modified as deemed appropriate by the Planning Board, (including the reduction of right of way and roadway widths). In considering an application to modify standards the Board shall take into consideration the particular natural characteristics of each site, the existence of other design factors such as the separation of pedestrian and vehicular circulation patterns and the location and adequacy of off-street parking and loading facilities and the impact of any modification on circulation, safety, maintenance, storm water drainage. The Board shall consult with the Fire Department, Police Department, and Public Works Department, and if, after such consultation, the Planning Board finds that the design of the proposed streets and common vehicular ways is adequate to

protect the public health, safety and welfare and will promote the purposes and intent of this ordinance, the Board may modify such standards.

- e. Private streets and ways may only be approved upon the submission of instruments granting the appropriate occupants of the development and state and municipal government and regulatory agencies satisfactory access over and across said streets and ways and setting forth the responsibilities of the occupants or owners of the development or development association or management committee, if any, regarding maintenance, repair and control of said streets and ways and the arrangements for financing same, and setting forth the rights of public and private utilities and the Town of Portsmouth. Notwithstanding the provisions hereof, the Board may require any particular street or way within the development to be dedicated to the public if such dedication is deemed necessary to allow safe and convenient access to neighboring parcels.

(2) Parking areas

- a. Parking areas shall be designed in accordance with the requirements and specifications contained in the Town of Portsmouth Land Development and Subdivision Regulations and shall conform to the requirements of Article IX, Section A of this ordinance.
- b. The Planning Board may allow satellite parking on lots other than lots abutting the lot to be served and may allow shared parking or either shared or satellite parking and allow such modification to the provisions of Article IX as it may deem appropriate without Board of Review approval.

(3) Storm Water Management

- a. Storm water management and drainage plans and facilities shall be designed and installed in accordance with the requirements of Article X, Section F, of the Town of Portsmouth Land Development and Subdivision Regulations and said plans and facilities shall be evaluated and approved or disapproved in accordance with the criteria set forth therein.

(4) Utilities

- a. Utilities shall be provided, located, and installed in accordance with the requirements of Article X, Section H, of the Portsmouth Land Development and Subdivision Regulations, as said requirement may need to be modified to allow for the installation and utilization of private streets and ways.

(c) Site Design Criteria

- (1) Generally - arrangement of buildings should provide more economy of roads and internal parking than normally associated with conventional development. Buildings and structures shall be located with consideration given to the topography of the development and shall be adapted to the terrain, the size and shape of the lot, the character of adjoining properties and existing structures in the immediate vicinity which have a visual relationship with the development. Environmentally sensitive areas shall be avoided and neighboring

- properties shall be buffered from objectionable features. Factors such as drainage, noise, odor, and the character of surrounding properties shall be considered in location of buildings and structures. All buildings shall be set back a minimum of fifty-five (55) feet from the centerline of any interior way, provided that such restriction shall not apply to PMTD or PRSD (amended 2003-07-14) and building in those developments shall be set back from the centerline such distance as the Planning Board may determine is necessary and prudent for installation and access to utilities and the maintenance of safe vehicular and pedestrian traffic patterns, taking into consideration the nature of the interior way and surrounding buildings and improvements. In no case may the minimum distance between any principal building in a PUD and the nearest lot line of an adjacent parcel outside the PUD and located in a residential district, be less than the rear yard setback required in the respective, adjacent residential district. The Board may not grant modifications or waivers of this requirement.
- (2) Nothing in this ordinance shall be construed to prevent or discourage the erection or maintenance of two or more buildings on any one lot in a planned unit development, notwithstanding the fact that both of said buildings are of such character, size or use that they would otherwise be characterized as "*principal buildings*" under other provisions of this ordinance.
 - (3) To the extent reasonably possible, structures within the development shall be compatible in architectural characteristics such as proportion, scale, roofline, general style, patterns, and proportion of windows and architectural details and features.
 - (4) Building materials shall be compatible to neighboring sites and structures. A finished texture, pattern, or a quality of detailing shall be depicted on plans for all proposed building materials.
 - (5) Uses and structures shall be dispersed throughout the development so that the uses which are least intensive in terms of noise, traffic, odor, hours of operation, etc., and those uses that by their nature may be conducted in structures that are more architecturally compatible with surrounding properties shall be located on the perimeter of the development. Those uses which are most intensive in terms of noise, smoke, odor, vibration or traffic or possess other potentially objectionable features and those uses which by their nature require buildings, and structures of a more standard industrial design, shall be confined to the interior of the development or to an area of the development abutting similar uses on abutting properties.
 - (6) The Board may require the reservation or dedication of easements for the benefit of land reserved for future development or land outside the development to allow those parcels to enjoy access to waterways, rail lines, highways, utility lines and facilities where such reservation or dedication is reasonably necessary to allow the coordinated, efficient and beneficial development and use of such properties and does not severely impair the value of the development or hinder the development or use of the subject parcel. Reservation or dedication of such areas may be cause for grant of modification or incentives pursuant to section 8 hereof.

- (7) Parking in the front yard or in view of properties outside the development shall be discouraged and may be denied. Consolidated curb cuts for access to the development or to secondary roads within the development are encouraged and may be required by the Board.
- (8) In a Planned Corporate Development and Planned Retail/Service Development (amended 2003-07-14) all areas not covered by buildings/structures, parking, and travel, areas shall be landscaped with grass, trees, shrubs, flowers, or ground cover indigenous to the area. Along the length of the front wall of each principal building there shall be a landscaped area with bushes, shrubs, or flowers indigenous to the area.
- (9) Any outdoor storage allowed in a Planned Corporate Development and Planned Retail/Service Development (amended 2003-07-14) shall be screened from view by an opaque screen architecturally compatible with the principal structure. After consideration of factors such as the use, topography, natural or proposed vegetation and the nature of surrounding property, the Board may require such screening in any Planned Unit Development
- (10) In any PID, PCD, or PRSD not in the Town Center District, where any façade of any building over 25,000 SF faces any adjacent residential parcel within 100 ft., a permanent berm containing at a minimum evergreen trees or arborvitae at least 6 feet in height when planted, planted at intervals of 20 feet on center. Height and width or berm as well as type and locations of plantings shall be designed by a registered landscape architect or certified arborist, and shall be designed to create an effective visual screen from said residential use. Depending upon the size and nature of the development, the Board may require up to a double row of six foot high evergreen trees planted at minimum intervals of 10 feet on center or in clusters or clumps shall be provided. Existing trees and shrubbery, or other suitable visual barrier, may substitute for this requirement, at the discretion of the Board.³⁸
- (11) Planned Retail/Service Developments shall adhere to the requirements of Article VII. Section G. Planned Retail/Service Development. In case of conflict, this section shall prevail, but in no case shall the standards herein be less stringent than that section.³⁹
- (d) TRAFFIC IMPACT.⁴⁰
Subparagraph (d) is applicable to PRSD only.
- (1) The principle vehicular access to the site shall be directly from an arterial street. The Board may waive this requirement if there is no reasonable alternative or it is deemed advantageous to the Town, and a traffic impact study demonstrates that the Level of Service on collector road or residential street(s) serving as the principle access will not be reduced below level C weekdays 7-9 AM or 4-6 PM, or Saturdays noon to 5:00 PM.
- (2) Vehicle access shall be designed to accommodate peak on-site traffic volumes to minimize traffic impact on public streets and maximize pedestrian safety. This shall be accomplished through adequate parking lot design and capacity; access drive entry throat length, width, design, location, and number; and traffic control devices.

(3) The site design shall provide, or make provisions for, direct connections to adjacent land uses in locations used or likely to be used for parking unless expressly waived by the Board.

(4) For proposed retail developments with greater than 25,000 SF of gross floor area of the first floor, the Board may, at its option and at the expense of the applicant, employ a transportation planner or transportation engineer to determine the traffic impact of the proposed development through a traffic impact analysis using the Institute of Transportation Engineers' trip generation guidelines. In no instance may a proposed development reduce 1) the existing Level of Service on the adjacent arterial road, or 2) below Level C on the nearest non-arterial through streets weekdays 7-9 AM or 4-6 PM, or Saturdays noon to 5:00 PM.

7. Inspections and Construction or Improvement Guarantees

The provisions of Sections N, O, P, and Q of Article X of The Land Development and Subdivision Regulations of the Town of Portsmouth shall be applicable to all improvements for which the Town will ultimately assume the responsibility for maintenance or operation including, but not limited to, public roads and drainage facilities. The Planning Board, in its judgment, may require inspections and approvals and impose the fees associated therewith, pursuant to Sections N, O and Q of Article X, for any private improvement which could detrimentally impact the operation or useful life of any public improvements, if not properly installed or maintained.

8. Incentives and Modifications

In addition to the modifications allowed pursuant to Section 6(a) hereof the Board shall further be empowered to modify or vary any provisions hereof upon a finding that such variance or modification will be conducive to an integrated development, will not be inimical to public health safety and welfare, and that the applicant is establishing an amenity or feature of significant value to the Town and/or general public, such as, but not limited to, public open space, public recreational facilities, access to the coastline, accommodation for mass transportation, or the like.

9. Ownership and Control

Prior to approval, the applicant must designate an entity, whether a management or condominium association, fee simple owner, partnership, corporation or other entity which will have direct control and responsibility for the installation and maintenance of all common areas such as parking facilities, private roadways, open space, buffer strips, and utilities, joint storm water and/or wastewater facilities and public facilities. Applicant must submit for approval documents which govern the existence and operation of such entity, vest management rights in such entity and set forth the procedure, if any, for substitution of any party for such entity.

10. Changes to Plan

- a) Proposed changes to an approved PUD shall be considered in accordance with Portsmouth Subdivision Regulations Article XIII. Section G.
- b) In addition, the basis for acceptance of a proposed change shall include

a finding that the public benefits and mitigation provided improves or remains equal to those originally approved, and that the change in the approved building and development program is sustainable and retains the character of the original concept. The Planning Board shall have the authority to declare that proposed changes, taken as a whole, are a significant departure from the original approval and constitute a new proposal.

11. Procedure and Decision

The Planning Board shall conduct public hearings on the application in accordance with the procedures established by the Portsmouth Land Development and Subdivision Regulations for Major Land Development and Major Subdivision Review regardless of whether the project constitutes a subdivision. The Board may require a personal inspection of the site by some or all Board members as a condition of Master Plan approval or at any time prior to final approval. During the course of said hearings the Board may require the applicant to produce, at applicant's sole cost and expense, such further information, plans, studies or data not specifically required by this ordinance or the Board's regulations if the Board deems such information or data is reasonably necessary to enable the Board to make the determinations with which it is charged hereunder. In the event the Board determines that independent, professional expertise is necessary to ensure proper and thorough investigation of the project or interpretation of data, plans, information or studies provided by applicant that the Board may engage the services of such expert.

The Planning Board, may, at its discretion, establish a Technical Review Committee to conduct technical reviews of specific applications subject to their jurisdiction on an as-needed basis. This committee shall operate per the provisions of the Subdivision Regulations, Article XII, Section B.⁴¹

At the conclusion of said hearings, the Board may approve said application, deny the application, approve the application in part and deny the application in part or approve it with modifications and/or subject to conditions and restrictions. In the course of granting any approval, the Board shall have the power to restrict or limit the potential uses of land within the development which the application designates as reserved for future development.

The Board shall approve a planned unit development as defined herein if, after the review provided for herein, it finds:

(a) that the development promotes the efficient use of land by providing a well coordinated and integrated development arrangement capable of accommodating varied but compatible land uses within the development and does not create any lot unsuitable for development except those reserved or dedicated to open space.

(b) that any adverse impacts to surrounding properties shall be mitigated by use of appropriate design techniques, open space, screening, etc.

(c) that the development as proposed complies with the standards and provisions of the zoning ordinance, except as the same are specifically modified by the Board.

(d) that there will be no significant, negative environmental impacts from the proposed development as shown on the plan with all conditions

for approval.

(e) that the proposed development and its location are consistent with the Portsmouth Comprehensive Community Plan.

12. DEVELOPMENT AGREEMENT ⁴²

Within 60 days of approval by the Planning Board, or such further time as granted by the Planning Board, the parties shall enter into a Development Agreement which shall include agreements on phasing of the development and/or major portions of the development, including any provisions, as applicable, whereby Applicant agrees to provide certain benefits within the development or off-site that contribute to public infrastructure beyond those needed for the development, public capital facilities, land dedication and/ or preservation, affordable housing, community or recreational facilities, or any other benefit intended to serve the proposed development or the town.

Development agreements shall be issued in a form suitable for recording in the Portsmouth Land Evidence Records and, upon approval of the Town Solicitor and the Planning Board, shall record the development agreement therein. The applicant shall bear the expense of recording.

Said Development Agreement may, at the option of the Planning Board, grant to the Town the right of self-help for the Town to complete public infrastructure and/or other agreed upon improvements on or off-site that are designed to protect adjacent properties, mitigate traffic, or provide other public benefit or protections, together with lien rights as provided under RIGL Chapter 34-28 with respect to all work or improvements performed by or on behalf of the Town. The Planning Board may also require the Applicant to provide the Town with a surety bond, irrevocable letter of credit, escrow account or other security in the form and amount the Planning Board deems necessary to guarantee the full performance of the Applicant's obligations under the Development Agreement. ⁴³

- a) The Development Agreement shall contain a clause defining the duration of the Development Agreement.
- b) The Development Agreement shall contain a clause providing that should any building greater than 25,000 SF in area become vacant, it shall be maintained on the exterior as if they are occupied, including such activities as cleaning the windows regularly.
- c) The Development Agreement shall contain a clause requiring landscaping to be continuously maintained. It shall provide: that vegetation planted in accordance with an approved site plan shall be maintained by the owner, any heir, or assignee; plants or trees that die or are damaged shall be replaced within 30 days; and that such replacement landscaping shall be equivalent in species and size to the original landscaping, or with another acceptable replanting plan.
- d) The Tax Assessor shall review the development agreement prior to execution in order to ensure that it is clear who is responsible for payment of property taxes on commonly held or shared ownership property. ⁴⁴

¹ Adopted September 19, 2006.

² Residential Open Space section Adopted February 25, 1997. Previously was "Intentionally left blank".

³ Planned Unit Development section adopted September 23, 2003.

⁴ "and retail/service developments" adopted October 27, 2004.

⁵ Adopted February 4, 2008.

⁶ Last sentence and bullets adopted February 4, 2008.

⁷ Adopted February 4, 2008

⁸ Adopted February 4, 2008.

⁹ Adopted March 15, 2010.

¹⁰ Adopted February 4, 2008

¹¹ Adopted March 15, 2010.

¹² Adopted September 19, 2006.

¹³ Adopted February 4, 2008

¹⁴ "or 80,000 square feet in the Town Center District" adopted October 27, 2004.

¹⁵ Redevelopment District added March 15, 2010.

¹⁶ "Uses Generally" adopted September 19, 2006.

¹⁷ Adopted March 15, 2010.

¹⁹ Deleted September 19, 2006: "multi-family housing provided said residential component, including required parking, open space and amenities, shall not exceed 50% of the developable land area of the total development.

²⁰ Planned Marina Village Development section adopted September 19, 2006.

²¹ Planned Resort Development section adopted September 19, 2006.

²² "research and development facilities" and "antennas and communications towers" deleted October 27, 2004.

²³ Redevelopment District added March 15, 2010

²⁴ Adopted October 27, 2004.

²⁵ Adopted October 27, 2004.

²⁶ Adopted March 15, 2010.

²⁷ Table revised to include PMVD and PRD adopted September 19, 2006.

²⁸ Adopted February 4, 2008

²⁹ Adopted February 4, 2008

³⁰ Adopted September 19, 2006.

³¹ Adopted September 19, 2006.

³² Adopted September 19, 2006.

³³ Adopted February 4, 2008

³⁴ Adopted February 4, 2008

³⁵ Adopted February 4, 2008

³⁶ Adopted February 4, 2008

³⁷ Adopted February 4, 2008

³⁸ Adopted February 4, 2008

³⁹ Adopted February 4, 2008

⁴⁰ Adopted February 4, 2008

⁴¹ Paragraph adopted September 19, 2006.

⁴² Adopted September 19, 2006.

⁴³ Adopted February 4, 2008

⁴⁴ d) Adopted March 15, 2010

ARTICLE IX. SPECIFIC DEVELOPMENT REGULATIONS

Unless otherwise noted, parking requirements apply to all developments regardless of size or type. Requirements for parking lots >100 spaces are so noted.

Section A. OFF-STREET PARKING AND LOADING¹

1. DEFINITIONS

Employee means the regular working staff (paid, volunteer or otherwise) at maximum strength and in full-time equivalent numbers necessary to operate, maintain or service any given facility or use under normal levels of service.

Gross Floor Area the term "gross floor area" (GFA) as used in this document shall mean the total floor area, including the exterior building walls, of all floors of a building or structure. GFA shall include all occupiable areas minus the following deductions:

- a) Vehicular parking and loading areas within the structure.
- b) Floor area occupied by HVAC (heating, ventilating and air conditioning), mechanical, electrical, communications and security equipment or apparatus.

Gross Leasable Area The term "gross leasable area" (GLA) as used in this document shall mean the gross floor area minus the following floor area deductions:

- a) Elevator shafts and stairways.
- b) Public restrooms.
- c) Public lobbies, common mall area, atriums and courtyards provided solely for pedestrian access to the building from the exterior, and/or for aesthetic enhancement or natural lighting purposes.
- d) Permanently designated corridors (i.e., not subject to relocation by the requirements of a specific lease).

Capacity shall mean the capacity of a facility or space as calculated by the applicable building code.

2. GENERAL

- a) No land shall be used and no building or structure shall be erected, enlarged or used unless the off-street parking space requirements are provided as specified in this section. For the purpose of this section, an enlargement of any building by 30% or more shall require the provision of off-street parking for the existing building as if it were newly constructed. Whenever any building, improvement or use of land may be changed to a new use, whether conforming or nonconforming, the provision for parking and loading spaces shall be as required for the new use so approved.
- b) Where the computation of required parking spaces results in a fractional number, fractions of one-half or more shall be counted as one.
- c) Required off-street parking facilities shall be provided on the same lot as the principal use they are designed to serve or as provided in paragraph F. Satellite Parking, herein.

- d) Each required car space shall be not less than ten (10') feet in width and twenty (20') feet in length exclusive of drives and maneuvering space. Where more than five (5) spaces are required, they shall be paved, except as may be required by environmental regulatory agencies.
- e) Handicapped parking spaces accessible to disabled persons shall be provided as may be applicable under the Americans With Disabilities Act and any federal regulations promulgated thereunder.
- f) All off-street parking and loading facilities shall be suitably sloped and drained to eliminate standing water and prevent damage to abutting property and/or public streets and alleys, so as not to cause any nuisance to adjacent or public property. In no case shall an off-street parking area exceed 5% in slope.² The design of all parking lot drainage shall conform to the drainage requirements herein, and utilize the Town of Portsmouth Subdivision Design Standards and the Rhode Island Stormwater Design and Installation Standards Manual, as applicable.³
- g) All off-street parking and loading facilities shall maintain distances from buildings, fire hydrants, post indicator valves and emergency access ways as required by the applicable Fire Code.
- h) Where one building is used for more than one use, parking requirements shall be computed for each use, except as provided in the parking requirements table below or under Satellite Parking or Shared Parking below. Where space within a building is shared, the more stringent requirements shall apply.
- i) No motor vehicle repair work or service of any kind shall be permitted in conjunction with parking or loading facilities provided in commercial districts, except emergency repair service necessary to start vehicles.
- j) No existing parking facility which is a part of any building, improvement or use of land, whether on the same lot as the principal use or on a separate lot, shall be reduced in size below the number of spaces required for such principle use, and for any and all accessory uses. This section shall not be construed to mean that parking facilities may not be reconfigured.
- k) Any parking area and loading space as defined in this Ordinance shall be continually maintained in satisfactory condition so as to be safe and attractive and free of hazard, nuisance or other unsafe condition.
- l) Overnight parking of RV's, mobile homes and other vehicles providing transient residency is prohibited.⁴

3. MINIMUM PARKING REQUIREMENTS

a) MINIMUM PARKING REQUIREMENTS TABLE

<u>USE</u>	<u>REQUIRED SPACES</u>	<u>OTHER REQUIREMENTS</u>
<u>RESIDENTIAL USES</u>		
Single Family	2/unit	
Mobile home parks	2/unit	
Multi-family Residential		
Studio and 1 bedroom	1/unit	plus 1 guest/5 units

<u>USE</u>	<u>REQUIRED SPACES</u>	<u>OTHER REQUIREMENTS</u>
Two bedrooms	1.75/unit	plus 2 guest/5 units
Three or more bedrooms	2/unit	plus 3 guest/5 units
Senior citizen apartments		
Senior - efficiency	1/unit	plus 1 guest/5 units
Senior - 1 bdrm	1/unit	plus 1 guest/5 units
Senior - 2 bdrm	1.5/unit	plus 2 guest/5 units
Senior - 3 bdrm	2/unit	plus 3 guest/5 units
Assisted Living / Congregate Care	1/10 regular beds, 1/5 special care	plus 1/250 gla office, medical, other, + 5 for kitchen & maintenance
<u>TEMPORARY RESIDENTIAL OCCUPANCY USES</u>		
Hotels/motels/inns	1/unit	plus 50% of requirements for related uses, + 2 for manager's unit.
Sanitariums/nursing homes	1/5 beds	or State requirement
Rooming & lodging houses	2 + 1/rental unit	
Group Home	1/3 beds	may be less if residents unable to drive
<u>RETAIL, OFFICE AND SERVICES</u>		
Shopping Center	4/1,000 sf of gla under 400,000 gla	See also offices and restaurants
Grocery Store	6 + 5/1,000 gla	
General Retail	4/1,000 gla	
<u>Offices, general:</u>		
gla up to 7,500 sf	4/1,000 gla	
7,501 to 40,000 sf	3.3/1,000 gla	
40,001 sf and greater	3/1,000 gla	
<u>Office in Shopping Center:</u>		
10% or less of center gla	no added space beyond that for general retail	
over 10% of gla	for that portion over 10%, add as required beyond general retail by type of office use.	
Office, medical/dental	4/1,000 gla	plus 1/100 sf waiting room
Office in residence	Determined at project review	
<u>Services</u>		
Bank, S&L, Credit Union	5/1,000 gla	
ATM	2/machine	
Unspecified Services	4/1,000 gla	
<u>EATING/DRINKING ESTABLISHMENTS</u>		
Restaurants, cafes, bars	13/1,000 gla	

Restaurant - Fast Food	17/1,000 gla
Restaurant in Shopping Center of 25,000 to 100,000 gla	10/1,000 gla
Restaurant in Shopping Center of 100,000 to 200,000 gla	6/1,000 gla

<u>USE</u>	<u>REQUIRED SPACES</u>	<u>OTHER REQUIREMENTS</u>
<u>AUTOMOBILE RELATED</u>		
Gas Station*, Vehicle Repair*	1/pump + 3/service bay	plus 1/250 sf of gla office & sales
Carwash	2/drying bay	plus stacking area **

* A service bay or pump is not a parking stall

** Stacking area is not parking.

A washing space is not a parking or stacking space.

RECREATION

Health clubs	1/200 sf of gla	plus 50% of required for incidental uses
Amusement Center	5/1,000 gla	plus 50% of required for incidental uses
Night Club	20/1,000 gla	
Golf Driving range	3, plus 1/tee	plus 50% of required for incidental uses
Golf course	4/green	plus 50% of required for incidental uses
Miniature golf course	1.25/hole	plus 50% of required for incidental uses
Tennis/racquetball	2/court	plus 50% of required for incidental uses

OUTDOOR, PARTLY OUTDOOR USES

Retail nursery/garden shop	1/1,000 sf indoor + 1/2,000 sf outdoor or greenhouse sales	
Produce stand	6/1,000 gla	
Lumber yard	2/1,000 SF lot area	parking for major machinery may not fill required spaces.
Marina	1/2 slips	if a launch ramp is provided, 20% of all spaces shall be 35 ft. or longer to accommodate boat trailers.
Retail outdoor other	1.5/1,000 sf lot used for display	

SCHOOLS

Business, professional, trade schools	1/1.5 students	
Art, dance, music studio	1/2 students at maximum capacity	
Nursery/day care/pre- school	required staff + 1/10 capacity	number of staff as regulated by State

INSTITUTIONAL USES & PLACES OF ASSEMBLY

Church, synagogue *	1/4 seats capacity
Club, lodge	1/4 capacity
Other places of assembly	1/4 capacity

* Parking spaces for public religious assembly may also be double counted for affiliated office, school and related activities.

<u>USE</u>	<u>REQUIRED SPACES</u>	<u>OTHER REQUIREMENTS</u>
<u>INDUSTRIAL AND STORAGE USES</u>		
Self-service storage	3/100 units	no added spaces for sales area related to storage.
Warehouse	0.75/1,000 gla	
Research & Development	2/1,000 gla	
<u>Manufacturing</u>		
1 - 3,000 sf	4/1,000 sf of gla	
3,001 - 5,000 sf	2/1,000 sf of gla	
5,001 - 10,000 sf	1.3/1,000 sf of gla	
10,001 - 50,000 sf	1/1,000 sf of gla	
50,001 + sf	0.8/1,250 sf of gla	

DRIVE UP STACKING LANE SPACE

Banks, S&L	8 vehicles for 1st drive-up lane, 6 for 2 nd and subsequent lanes
Restaurants with driveup	Stacking for 11 vehicles, of which at least 6 before menu board
Carwash - self service *	2 queuing lane in front of each stall.
Carwash - full service *	2 times the capacity of the washing operation (length of the conveyor divided by 20)

* A stacking lane shall be at least 10 ft. wide & each stacking space shall be 20 ft. long. Stacking shall not interfere with parking nor travel lanes, nor protrude into the street.

b) Requirements for uses not specifically listed herein shall be determined by the Building Inspector based upon the requirements for comparable uses and upon the particular characteristics of the use.

c) In all cases in which parking of large vehicles or of more than one company vehicle is part of the business, additional spaces shall be provided for such vehicles.

4. STACKING SPACES FOR DRIVE-THROUGH SERVICES

Uses which have drive-through window services shall provide queuing spaces. The minimum number of queuing spaces required shall be determined by the Zoning Board of Review. Where such queuing spaces are provided, they shall conform to the following standards:

- a) No queuing space may occupy any portion of a public right-of-way;
- b) Each queuing lane shall be a minimum of ten (10) feet in width; and
- c) Queuing spaces may not be used to satisfy any of the off-street parking or loading requirements of these regulations.

5. AISLES, DRIVEWAYS AND MANEUVERING SPACE

- a) Each access driveway shall be located and designed so as to cause the least practical interference with the use of adjacent property and with the movement of pedestrian or vehicular traffic.
- b) Access driveways shall be curbed.
- c) All parking facilities shall be arranged so that any vehicle entering a public right-of-way can do so while traveling in forward motion, and a vehicle entering the parking facility shall not be required to enter a street to move from one location to any other location within the parking facility.
- d) All parking facilities shall be arranged so that parking maneuvers can be accomplished without driving, maneuvering or encroaching into or upon any public right-of-way, walk-way, or unpaved landscaped area within or adjoining the parking facility. All parking stalls shall open directly upon a maneuvering or turn around area or an aisle leading to an access driveway and shall be individually and continuously accessible.
- e) As feasible, in traffic sensitive areas adjacent commercial parking lots shall be connected by driveways in order to lessen traffic congestion.
- f) The radius of entrance drives shall be fifteen (15) feet.
- g) Access driveway widths shall have the following dimensions:
 - (1) A minimum of eleven (11) feet for all one-way driveways.
 - (2) A minimum of twenty (20) feet for all two-way driveways.
- h) Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking:

Aisle Width	Parking Angle (degrees)		
	45°	60°	90°
One-Way Traffic	11'	13'	18'
Two-Way Traffic	20'	21'	23'

6. SATELLITE PARKING

Parking may be permitted by the Zoning Board of Review on an abutting lot or, if not in a traffic sensitive district, directly across the street from the principal building, provided that:

- a) Said satellite parking area is subject to a recorded easement; and
- b) Said satellite parking area is not to be used or counted for parking for any other use, except as permitted under paragraph G. Shared Parking Facilities below.

7. PARKING LOT LOCATION AND ORIENTATION FOR PARKING LOTS GREATER THAN 100 SPACES ⁵

a) Parking areas should provide safe, convenient, and efficient access for vehicles and pedestrians. They should be distributed around large buildings in order to shorten the distance to other buildings and public sidewalks and to reduce the overall scale of the paved surface. If buildings are located closer to streets, the scale of the complex is reduced, pedestrian traffic is encouraged, and architectural details take on added importance.

b) No more than 60 percent of the off-street parking area for the entire property shall be located between the front facade within the front yard of the principle building(s) and the primary abutting street unless the principle building(s) and/or parking lots are screened from view by out-lot or pad development (such as restaurants) or additional tree plantings and/or berm.

c) Smaller retail/service buildings less than 20,000 square feet and located within a large retail complex as a separate building pad(s) should incorporate into their design structural enhancements similar to the principle structure in order to provide visual consistency and a greater sense of place within the center.

d) The location of all off-street parking spaces shall be on the same lot as the principle use or not over 400 feet from the principle use, unless permitted under "shared parking" or satellite parking provisions.

e) A designated Park and Ride area may be required. If required, Park and Ride areas shall be a minimum of 10 parking spaces (not to be included in satisfying minimum parking lot space requirements), and shall be located as near to the principle vehicular access and public transit facilities as possible.

f) An off and/or on-street bus stop for customers and employees shall be provided when the site is located on an established or planned transit route.

g) Cart Returns. Where shopping carts are to be provided, a minimum of one 200 square foot cart return area shall be provided at suitable intervals within the parking area for every 100 parking spaces. Cart corrals shall be of durable, non-rusting, all season construction, and shall be designed and colored to be compatible with the building and parking lot light standards. There shall be no exterior cart return or cart storage areas located in the parking lot within 25 feet of the building.

(1) Shopping cart storage areas adjacent to facade walls (not in parking lots) must be screened with landscaping or materials matching the materials of the primary facade wall. No more than two shopping cart storage areas (one on each side of an entrance) may be provided on any facade wall. Shopping cart storage areas may not exceed 20 feet in length.

8. SHARED PARKING FACILITIES

a) Required off-street parking for any number of separate uses may be combined in a shared parking facility under the conditions of this

section, subject to the approval by the Zoning Board of Review. Such parking space shall be established by a recorded covenant or agreement as parking space to be used in conjunction with the principal use and shall be reserved as such through an encumbrance on the title of the property to be designated as required parking space. Removal of such encumbrance may be permitted only by the Zoning Board of Review or Planning Board, as applicable.

b) The total number of spaces provided shall not be less than the sum of the individual requirements for all uses, unless otherwise permitted as follows:

(1) Up to seventy-five (75%)⁶ percent of the parking spaces required for theaters, public auditoriums, banquet facilities, and church auditoriums may be provided and used jointly by offices, retail, service establishments, schools, and similar uses not normally open, used, or operated during the same hours as those uses listed above.

(2) Up to thirty (30%) percent of the parking spaces required for the predominant use on a site may be shared with other uses operating during the same time of day and days of the week. The predominant use is considered to be that which requires the most parking of those sharing the parking facilities.⁷

9. OFF-STREET LOADING REQUIREMENTS

a) Adequate off-street loading shall be provided for each use. Loading bays shall be located at the side or rear of the building they are intended to serve. Off-street loading facilities required by this section shall be maintained as long as the building, use or structure remains.

b) Off-street loading spaces shall not be used to meet off-street parking requirements, nor shall off-street parking facilities be used to meet off-street loading requirements.

c) No loading bay shall be located within fifty feet (50') of a residential district. Trash collection or compaction areas shall not be located within 20 feet of any public street, public sidewalk.

d) Staging, loading, or idling of commercial vehicles in a service area is prohibited between the hours of 9:00 p.m. and 7:00 a.m. Signs prohibiting staging, loading, or idling of commercial vehicles between the hours of 9:00 p.m. and 7:00 a.m. must be posted every 100 feet adjacent to the service area.⁸

10. LANDSCAPING REQUIREMENTS

It is intended that the application of the landscape standards set forth below will reduce the visual and environmental impacts of large expanses of parking areas. Breaking up of paved parking areas with plantings will provide improved aesthetics and enhance both the development and the community.

a) A landscaping and lighting plan to be submitted as part of the development application is required for all parking areas.

(1) The plan will specify plant materials and will illustrate how landscape provisions will visually screen and divide parking areas.

(2) Illumination levels and placement of light sources will be shown.

(3) Lighting must be full cut-off lighting directed away from residential uses and no more than 20 ft. high at the perimeter of the

parking area, with a brightness of no more than ½ foot-candle at any property line with the exception of vehicular entrances and exits.⁹

b) Where a parking area is altered or expanded to increase the size to 15 or more vehicular parking spaces, interior landscaping for the entire parking area shall be provided and not merely to the extent of its alteration or expansion.

c) Landscaped areas shall not count toward the 70% Maximum Building, parking and travelway coverage in Article VII Section G. Retail Business, Office or Consumer Service Complex herein (that is they are counted as unpaved open areas).

d) Interior Parking Area Landscaping

For the purposes of this section, the "interior parking area" shall include parking stalls, access drives, aisles, walkways, dead spaces, and required separations of parking from structures, but shall not include required setbacks, access driveways or walkways within such setbacks, or areas between buildings.

(1) The following percentages of interior parking area shall be suitably landscaped as described below:

<u>Size of Parking Lot</u>	<u>% of Interior Area to be Landscaped</u>
< 15 spaces	0%
15 - 50 spaces	5%
50 - 100 spaces	7%
> 100 spaces	10%

e) Landscaping Dimensions and Material

Parking lots containing fifteen or more spaces shall be planted with at least one tree per twelve spaces, no smaller than 2" caliper (trunk diameter at 4 ft. height), each tree being surrounded by no less than 50 sq. ft. of permeable, unpaved area.

(1) All landscaping shall be contained in planting beds. Each planting bed shall have a minimum area of fifty (50) sq. ft. and shall be enclosed by appropriate curbing or similar device at least six (6) inches wide and six (6) inches in height above the paving surface. Planting beds may be located below the grade of the paved lot in order to absorb some surface water runoff.

(2) Interior landscaping features shall be arranged in a linear manner in order to provide a consistent pattern of parking. On each end of a landscaped feature shall be planted either a tree with a minimum vertical clearance of branches six feet from the ground or one or more shrubs not less than two feet in height nor more than four feet in height.

(3) Interior landscaping features containing trees shall be contained in peninsulas or islands having a minimum width of eight feet and a minimum length of 18 feet. There shall be a minimum of four (4) feet to the center of all trees from the edge of paving where vehicles overhang.

(4) Grass, ground cover or mulch with a growth-preventing pervious underlayment shall be planted on all portions of the landscape area not occupied by other landscape material.

(5) In order to provide that the required landscape areas be properly dispersed, no required landscape area shall be larger than the following:

- i. 350 square feet in parking areas under 30,000 square feet.
 - ii. 1,500 square feet in parking areas over 30,000 square feet.
 - iii. Landscape areas larger than the above are permitted as long as the additional area is in excess of the required minimum.
- (6) All landscaped islands shall be situated below the grade of the parking spaces and driving aisles such that stormwater runoff flow is directed to and trapped by such islands.¹⁰

f) Perimeter Buffer and Screening

The intent of perimeter buffers and screening is to minimize, to the greatest extent practicable, visual and noise impacts on abutting residential properties from buildings, parking lots, and accessory uses and equipment (lighting, loading, traffic, etc.). For parking lots over 100 spaces, the intent is to screen such items from view from adjacent residential properties, to the greatest extent practicable, and from the street, while still allowing sufficient visibility for the intended use of the property.

Perimeter buffer and screening should be minimized for developments within the Town Center zoning district, except within rear setbacks that abut residential zones.¹¹

- (1) Parking areas must be screened along lot lines bordering institutional or residential uses or residential zones and along street frontages. A landscaped buffer area at least 20 feet wide to the rear lot line and 10 feet wide to the side lot lines is required. The front landscaped buffer along a public street shall be the depth of the required front yard or 20 feet, whichever is less. For parking lots over 100 spaces, the **Zoning Board of Review** or Planning Board, as applicable, may require a landscaped buffer up to 50 ft. wide. Such width shall be based upon:¹²

- size and intensity of proposed use;
- relative topography of the proposed development to adjacent residential development;
- placement of parking, loading and service areas;
- landscaped and/or solid screening.

(2) All trees shall be a minimum of 2" caliper (trunk diameter) when planted. Native trees and shrubs shall be planted wherever possible, in order to capture the "spirit of the locale" through indigenous species. Trees shall be of a type that will survive urban conditions with little or no maintenance.

(3) For parking lots over 100 spaces, up to 75% of the lot frontage adjacent to any arterial street, not including vehicular and pedestrian entrances, may be required to include screening of on-site parking by means of on-site buildings, which may include the primary structure, as well as dense landscaping, or a combination.¹³

(4) For parking lots over 100 spaces, 75% of the lot frontage adjacent to all other streets shall provide screening of on-site parking.¹⁴

(5) Lot frontage adjacent to residential use or residential zoning districts shall provide screening of on-site parking by means of walls, landscaping, landscaped berms, or buildings.¹⁵

- (6) Upon variance, a landscaped buffer of not less than at least six (6) feet wide, may be permitted provided it is densely planted with a mixture of deciduous and evergreen trees and shrubs to create an effective visual barrier.
- (7) Any fire lane and setback of the fire lane from a building required by the Portsmouth Fire Dept. may not count toward the landscaped buffer requirement.¹⁶
- (8) Maintenance of Significant Trees¹⁷
- (i) Removal of viable live trees greater than 12 inches in caliper is expressly prohibited within any required landscaped buffer, except invasive species that tend to choke out other growth. An area of six feet on all sides of such trees may not be paved.
- (ii) Removal of viable live trees greater than 12 inches in caliper within the proposed building footprint or within the parking area may be approved by the Board if no reasonable alternative is available.
- (iii) A tree deemed "destroyed" by a certified arborist chosen by the Town at the applicant's expense may be removed with the approval of the Zoning Enforcement Officer.
- g) Screening Material¹⁸
- (1) Suitable temporary visual screening at least six feet in height shall be installed within any required buffer prior to the commencement of any other construction, excavation, land clearing or grading activities.
- (2) Where any parking lot or section of a parking lot greater than 100 spaces faces residential uses on adjacent lots within 100 ft., a permanent berm containing at a minimum evergreen trees or arborvitae at least 6 feet in height when planted, planted at intervals of 20 feet on center. Height and width of berm and locations of plantings shall be designed by a registered landscape architect or certified arborist to meet the intent of this section. Depending upon the size and nature of the development, the appropriate Board may require up to a double row of six foot high evergreen trees planted at minimum intervals of 10 feet on center or in clusters or clumps shall be provided. Existing trees and shrubbery, or other suitable visual barrier, may substitute for this requirement, at the discretion of said Board. At its option, said Board may require a solid wood fence of 6 ft. in height in addition to or in place of said berm, but not in place of the evergreen trees or arborvitae. Wood fences on the perimeter of a lot shall be installed with the finish side of the fence slats facing toward the neighboring property.
- (3) Chain link or wire mesh fence may not be used as a screening material.
- h) Landscaping for Service Structures.
- (1) In all non-industrial zones, outdoor storage areas, exposed machinery, service structures including propane tanks, dumpsters and outdoor areas used for the storage and collection of rubbish,, air

conditioning units and condensers, electrical transformers, and other equipment or elements providing service to a building or a site must be visually screened from roads and surrounding land uses. Suitable types of screening include opaque wood fences and dense evergreen hedges of five (5) feet or more in height. Service structures in an industrial zone shall be fully screened when located within 35 feet of any zone other than industrial.

(2) A continuous planting, hedge, fence, wall, or earth mound shall enclose any service structure on all sides unless such structure must be frequently moved, in which case screening on all but one (1) side is required. The average height of the screening material shall be one (1) foot more than the height of the enclosed structure, but shall not be required to exceed eight (8) feet in height. If service structures are screened by plant material, such material may count towards the fulfillment of perimeter landscaping. In locations where potential health or safety hazards may arise (such as rubbish storage/collection areas), a solid wooden fence, six (6) feet in height is required (to deter children and animals from entering the premises).

i) Vision Clearance

All developments, signs, landscaping and other improvements shall provide for clear, unobstructed vision for pedestrians and motorists entering, exiting or moving within any development.

(1) Pertaining to street intersections, entrances or exits from parking lots, and intersections of parking lot aisles and driveways, there shall be a 3-dimensional area between the height of three feet and seven feet from the ground for a distance of thirty feet from the corner in which nothing exists, is erected, placed, planted or allowed to grow in such manner as to materially impede vision.

SECTION B. SIGNS

1. DEFINITIONS

Unless otherwise expressly stated in this Ordinance, the following definitions shall apply to this section:

- a) Announcement or Bulletin Board - signs containing written or printed notices for public, fraternal, charitable, civic or religious institutions that contain no commercial advertising.
- b) Billboard - An outdoor sign advertising products or services not made, sold, used or served on the premises on which the sign is located.
- c) Erect - To build, construct, attach, hang, place, suspend or affix a sign, or to paint a wall sign or to do anything else which causes a sign to be visible to the general public.
- d) Frontage - Building - The length of a building, at ground level, that faces a public street or parking area.
- e) Frontage - Street - The distance, measured along a straight line connecting the point of intersection of the side lot lines with a public street.

f) Sign - Any object, device, or structure, or part thereof, situated outdoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. Excluded from this definition are the actual products or merchandise being marketed, and pavement markings or driveway directional arrows painted on the ground that contain no advertising.

g) Sign Area - The area of a sign is the total area within a line circumscribing all surfaces or structures used or employed or designated for use as a sign or for sign purposes including spaces between or within letters and/or pictorial matter, slates and panels.

(1) Spaces between major supports or frames required for clearance between sign and ground shall be excluded. Frames and structural members that do not meet the definition of a sign shall not be included in the computation of sign area.

(2) All visible faces of a multi-faced sign shall be counted separately and then totaled in calculating sign area, except that on dual-faced signs where the two faces are parallel and opposite, only one side shall be counted. Three dimensional signs shall be treated as dual-faced and the total area shall be two times the area of the line circumscribing all surfaces or structures used or employed or designated in the plane of the largest dimension.

h) Sign, Freestanding - A sign supported by a pole, uprights, braces or frame or similar device on the ground and not supported by any walls, building or similar structure.

i) Sign Height - The height of a sign shall be the vertical distance measured from the ground at the base of the sign to the highest point of any portion of the sign or supporting structure.

j) Sign, Illuminated - A sign illuminated with an artificial light directed from an exterior source or illuminated from within as an integral part of the construction of the sign, including neon signs.

k) Sign, Off-Site Directional - Any sign giving directions to the location of any use or activity not located upon the property upon which the sign is erected, and which may contain only the name of the use and necessary information giving directions to the use; provided however that no advertising shall be contained in such sign.

l) Sign, Portable - Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to: signs designed to be transported by means of wheels; signs converted to A or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; satellite dishes which display advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

m) Sign, Projecting - A sign erected so as to project approximately perpendicular from the exterior of any building or wall.

n) Sign, Roof Mounted - A sign placed upon the roof of any building or portion thereof, or erected on a vertical framework supported by the roof of a building.

o) Sign, Wall-Mounted - A sign erected against, painted on or attached to the wall of any building or structure (except a freestanding sign support) including by illustration and not limitation, signs affixed to fences, screens and freestanding walls.

p) Sight Distance Triangle - The land adjoining a street intersection that is kept clear of obstructions between three and seven feet above the ground to protect the visibility and safety of motorists and pedestrians. The protected sight distance area is the triangle with legs that are the intersecting flowlines of two streets at an intersection. The legs shall extend thirty-five (35) feet away from the intersection of the flowlines.

2. BUILDING PERMIT REQUIRED/SAFETY AND MATERIALS

a) Except as provided herein, no sign shall be erected, installed, displayed, kept, modified, repaired, placed or replaced unless a building permit is issued therefore.

b) No provision of this Ordinance shall be construed to prohibit the painting, repainting, varnishing, etc. of a lawfully existing sign. No provision of this Ordinance shall be construed to prevent the building inspector from issuing a permit for the repair, replacement or resurfacing of any preexisting, nonconforming sign, lawfully existing on the 23rd day of October, 1989, provided that there is no change in the height, location, or shape of said sign or increase in sign area (unless the change in the shape of the sign is due to a decrease in sign area, in which case change in the shape of said sign is permissible).

c) The Building Inspector may require the following information to be submitted along with the application for a building permit:

- (1) Name, address and telephone number of the applicant
- (2) A drawing of the proposed sign, giving dimensions, colors, materials and details about the proposed lighting.
- (3) A drawing of the building or lot showing where the proposed sign is to be located in relation to the building, property lines and streets, including heights.
- (4) A drawing of the plans and specifications and details of the method of construction and attachment to the building or in the ground.
- (5) Any electrical permit required and issued for said sign.
- (6) Written consent of the owner of the building, structure or land to which or on which the sign is to be erected.

d) Every sign and all parts thereof, including without limitation, the framework, supports, background wiring systems and anchors shall be constructed and maintained in compliance with all applicable building, electrical and fire prevention codes. All signs and parts thereof shall be kept in good repair.

3. PERMITTED SIGNS IN ANY ZONING DISTRICT

The following signs are permitted in any Zoning District. No sign shall be higher or wider than four (4) feet exclusive of framework:

- a) One sign, no greater than one and one half square feet in area displaying the name and address of the occupant and/or identifying a permitted or accessory use.
- b) Announcement or bulletin boards provided they are erected for a period not to exceed two weeks in conjunction with advertisement of an upcoming event. No more than two such signs shall be permitted for any event and the total combined sign area for all signs for any one event shall not exceed 32 square feet.
- c) Temporary "For Sale" or "For Rent" signs no greater than six (6) square feet in area in a residential zone and no greater than twelve (12) square feet in area in any other zone that advertises the sale, lease, rental, etc. of real property upon which the sign is located. These signs shall not be illuminated.
- d) Traffic signs or signs erected by a public or municipal agency in discharge of its governmental functions.
- e) Instructional or directional signs, identifying on-premise traffic, parking or other functional activity, such as lavatory facilities, telephone, sections of a building, entrances, offices, etc. bearing no commercial advertising. Each sign shall not exceed two (2) square feet in area.
- f) Accessory signs incidental to a business or a profession conducted on the premises indicating hours of operation, credit cards, business affiliations, and the like, provided the total area does not exceed two (2) square feet; and accessory signs such as no trespassing, or other such signs regulating the use of the property upon which it is located, of no more than two (2) square feet in area per sign.
- g) Any public notice or warning required by a valid and applicable federal, state or local law, regulation or ordinance.

4. SIGNS PERMITTED IN RESIDENTIAL AND OPEN SPACE DISTRICTS

- a) The following signs are permitted in residential and open space districts:
 - (1) All signs permitted under Paragraph 3 above.
 - (2) One sign, no greater than twelve (12) square feet in area, identifying a legally maintained nonconforming use. The location of such signs shall comply with the side yard setback provisions of the Land Space Requirements Table in Article III. for the zoning district in which it is located. Such sign shall be placed no closer than ten (10) feet from the front lot line and shall not project above the height of any principal building. The overall height of a freestanding sign in these districts shall not exceed ten (10) feet.
 - (3) One sign, no greater than twelve (12) square feet in area, identifying a use permitted by special use permit¹⁹ or use granted by variance proceeding. The location of such signs shall comply with the side yard setback provisions of the Land Space Requirements Table in Article III. for the zoning district in which it is located.
 - (4) Permanent signs at major entrances to residential developments or open space entrances designed only to identify such developments or spaces and do not exceed twelve(12) square feet in area.
- b) Signs in these districts shall be lighted only by continuous, external white light.

5. SIGNS PERMITTED IN COMMERCIAL, INDUSTRIAL AND WATERFRONT DISTRICTS

The following signs are permitted in commercial, industrial and waterfront districts:

a) On lots having one establishment:

On any lot upon which is located only one establishment, the following signs shall be permitted:

(1) One freestanding sign, not to exceed fifteen (15) feet in overall height including the space clearance between the ground and the sign. The maximum area of said signs shall be equal to or less than one square foot of sign area for each 5 lineal foot of street frontage of said lot, not to exceed 32 square feet. In instances where a lot fronts on more than one street, only the frontage on one street may be used for calculating sign area. That frontage shall be the frontage upon which the signs are located.

(2) One wall mounted sign, one roof-mounted sign or one projecting sign. The maximum area of a wall-mounted sign shall be equal to or less than one (1) square foot for each two lineal feet of building frontage on which the signs are attached, not to exceed fifty (50) square feet, provided that the sign shall not extend beyond the top or side of the wall to which it is attached. The maximum area of a roof-mounted or projecting sign shall not exceed twelve (12) square feet. The base of all projecting signs shall be no less than eight (8) feet above the ground. Projecting signs shall not project more than four (4) feet from the exterior wall of the building. Roof mounted signs shall not extend above the peak of the roofline of the roof upon which it is mounted or be attached in any way which would increase the overall height of the structure on which is located.

b) On lots having multiple establishments:

On any lot upon which is located more than one establishment the following signs shall be permitted:

(1) One freestanding sign per lot not to exceed fifteen (15) feet in overall height including the space clearance between the ground and the sign. The maximum area of said sign shall be equal to or less than one square foot of sign area for each five (5) lineal feet of street frontage of said lot, not to exceed thirty-two (32) square feet. In instances where a lot fronts on more than one street, only the frontage on one street may be used for calculating sign area. That frontage shall be the frontage upon which the sign is located. and:

(2) One wall mounted sign, one roof mounted sign or one projecting sign per establishment. The maximum area of any wall mounted sign shall be equal to or less than one (1) square foot for each two (2) lineal feet of building frontage on which the sign is attached divided by the number of establishments having signs on said wall, up to a maximum of forty (40) square feet, provided that said sign shall not extend beyond the top or side of the wall to which it is affixed. The maximum area of a roof mounted or projecting sign shall not exceed twelve (12) square feet. The base of all projecting signs shall be no less than eight (8) feet above the ground. Projecting signs shall not project more than four (4) feet from the exterior wall of the building. Roof mounted signs shall not extend above the peak of the roofline of the roof upon which it is mounted or be attached in any way which would increase the overall height of the structure on which is located. (NOTE: It is not clear if this applies to each sign or all signs in total.)

c) Common Signage Plans

If the owner or owners of a lot with three (3) or more establishments file with the Building inspector a common signage plan conforming with the provisions below, a twenty five percent (25%) increase in the area of each freestanding or wall mounted sign shall be allowed.

(1) The Common Signage Plan shall contain all information required by paragraph 2.c) above, with the exception of paragraph 2.c)(1), and specify standards for consistency among all signs on the lot with regard to color scheme, lettering or graphic style, lighting, location on buildings, material and sign proportions.

(2) There shall be only one freestanding sign for each lot regardless of number of establishments and the common signage plan shall provide for sale or shared usage of said sign.

(3) The Common Signage Plan shall be signed by all owners or their authorized agents in such form as the building inspector shall require.

(4) A Common Signage Plan shall be included in any development plan, site plan, planned unit development plan, or other official plan required by the Town for any proposed development including those plans required to be filed pursuant to Article VII, Section G. of this ordinance and shall be processed simultaneously with that plan.

(5) A Common Signage Plan may be amended by filling a new Common Signage Plan that conforms with all requirements of the ordinance then in effect.

(6) After approval a Common Signage Plan, no sign shall be erected placed, painted, or maintained, except in conformance with such plan, and such plan shall be enforced in the same way as any provision of this ordinance. In case of any conflict between the provisions of such a plan and any other provision of this ordinance, the ordinance shall control.

d) All signs permitted under paragraphs 3 and 4 above.

6. SIGNS PERMITTED BY SPECIAL USE PERMIT

The following signs may be permitted as a special use permit by the Zoning Board of Review:

a) Off-site directional signs where the location of a use requires such signs in order to avoid confusion, traffic congestion or similar inconveniences, and to facilitate travel to such location. The Zoning Board of Review may permit signs as are reasonably necessary to accomplish these objectives, but no more than two such signs shall be permitted for any one use. The area of any such sign shall be no more than four (4) square feet and in all cases the minimum number of signs and size necessary to accomplish any of these objectives shall be authorized. The Zoning Board shall only grant the minimum relief necessary to affect the purposes of this section.

b) Signs, which by their content, design, shape or construction, are representations of a trademark, logogram or symbol employed in the advertising of any industrial use. No more than one (1) such sign shall

be permitted for each such use, and may be permitted only in industrial zoning districts. The area of any such sign may not exceed forty (40) square feet. Such sign shall only be wall-mounted, ~~and~~ may be illuminated and shall be in addition to any permitted signs. The Zoning Board shall only grant the minimum relief necessary to affect the purposes of this section.

c) Any sign not in conformance with the provisions of this ordinance in regards to permitted number of signs, sign area, height, or location only, provided that no relief from this ordinance may be granted to allow the lawful erection or maintenance of signs prohibited by Paragraph 7 hereof.

7. SIGNS PROHIBITED IN ALL DISTRICTS

The following signs are prohibited and shall not be erected or maintained in any district:

- a) Billboards or off premise signs (except as permitted under paragraph 6. a)).
- b) Signs which incorporate in any manner any flashing, moving or oscillating illumination or illumination which varies in color, or signs with audible sounds.
- c) Signs which have visible moving parts, including signs which achieve movement by action of wind currents.
- d) Projecting signs with internal illumination.
- e) Obsolete signs or obsolete supporting structures which no longer advertise the bone fide business or use conducted on the premises.
- f) Signs or supporting structures which constitute a hazard to public safety or health.
- g) Signs which by reason of size, location, content, coloring or manner of illumination, obstruct, hinder or distract the vision of drivers or obstruct or detract from the visibility or effectiveness of any traffic sign or control device on public streets and roads or which interfere with, mislead or confuse traffic.
- h) Searchlights, pennants, spinners, banners and streamers.
- i) Portable signs and trailer signs.

8. GENERAL PROVISIONS

- a) No sign shall extend onto or over a public right-of-way without prior approval by the Town Council. The Town council shall require the applicant to maintain sufficient insurance coverage to protect both the Town and the applicant from all claims from personal injuries which may arise from said sign.
- b) Nothing in this section shall be interpreted as authorization for or approval of the continuation of the use of signs in violation of any ordinance in effect at the time of the passage of this section.
- c) No sign shall be erected or placed within the sight distance triangle defined in paragraph 1 herein which obstructs the visibility of a motorist entering or leaving such establishment in the space between three feet and seven feet above the ground.

9. SIGNS EXEMPT FROM PERMIT REQUIREMENT

No permit shall be required for signs defined in subparagraphs a), b), d), e), f) and g) of paragraph 3 herein, provided said signs otherwise comply with the provision of this ordinance.

10. ADMINISTRATION AND ENFORCEMENT

The Town Building Inspector shall have the responsibility and authority for:

- a) Determining conformance with this article for all proposed and presently existing signs.
- b) Issuing a permit for all signs which comply with this ordinance.
- c) Issuing notice to any owner of a nonconforming or prohibited sign or owner of land on which a prohibited sign exists that they are in violation of this ordinance and to supply to said person a copy of this ordinance.
- d) Inventorying all signs presently in the Town.
- e) Determining compliance with the state building and safety codes and conducting periodic inspections of existing signs to ensure the safety and continued compliance with state building and safety codes.
- f) Removing prohibited signs which are unsafe or unlawful as defined under the state building code or signs determined to be prohibited or not in compliance with this chapter.

Section C. VISION CLEARANCE

All developments, signs, landscaping and other improvements shall provide for clear, unobstructed vision for pedestrians and motorists entering or exiting any development.

1. Pertaining to street intersections and entrances or exits from parking lots, a 3-dimensional area between the height of three feet and seven feet for distance of thirty feet from the corner (measured along the property line at intersections and at the curb for parking lots) in which nothing exists, is erected, placed, planted or allowed to grow in such manner as to materially impede vision.
2. Pertaining to residential driveways, the clear vision distance from the street shall be ten feet.

Section D. DESIGN REVIEW STANDARDS ²⁰**1. PRE-APPLICATION MEETINGS - CONCEPT PLANS**

- a) One or more pre-application meetings shall be held for all developments to be reviewed by the Design Review Board according to Articles VII and VIII of this ordinance. Pre-application meetings may be held upon request of either the Zoning Officer or the applicant. Pre-application meetings shall allow the applicant to meet with the Design Review Board for advice as to the pertinent Town plans, ordinances, regulations, rules and procedures and standards which may bear upon the design of the proposed development project.
- b) The applicant may request the Design Review Board for an informal concept plan review for a development. Such meetings are encouraged. The purpose of the concept plan review is to provide Design Review Board input in the formative stages of a development concept design. (Note: a "concept plan" is not to be confused with a full application.)
- c) Applicants seeking a pre-application meeting or an informal concept plan review shall submit materials at least two (2) weeks prior to meeting with the Board.
- d) Pre-application meetings shall aim to encourage information sharing and discussion of project concepts. Pre-application discussions are

intended for the guidance of the applicant and shall not be considered approval of a project or its elements. Any tentative approval or acceptance of a pre-application concept plan by the Design Review Board shall not be binding upon the Zoning Board of Review. Pre-application discussions are not to be considered as vesting of any sort in zoning or any other land use ordinances of the Town. The Board shall not be required to hold a public hearing on the pre-application concept plan filed.

e) CONCEPT PLAN SUBMITTAL CONTENTS

- (1) Plan drawn on sheet at a scale of 1" = 40' and be 32" long and 22" wide on which shall be at least the following:
- (2) A plot plan showing the entire area to be developed as well as any abutting land under control of the applicant or owner of the land shown on the plan, and all properties within 500 ft. of proposed development ²¹.
- (3) A title block including the name of the designer and engineer, the name of the development, owner and applicant if other than owner, the date and scale.
- (4) Show location of all proposed vehicular and pedestrian interior ways.
- (5) Show location of proposed parking.
- (6) Show location of all proposed buildings (new and renovated) by type.
- (7) Show location of retention/erosion control areas if necessary to meet drainage requirements.
- (8) Show the proposed treatment of all open spaces.
- (9) Show preliminary building elevations and exterior treatments.
- (10) A one-page written description of the project.

2. APPLICATION SUBMISSION REQUIREMENTS

- a) In addition to the submittals required in Article VII in this Ordinance, seven (7) full sets of building and site drawings including, but not limited to, building elevations, landscaping and planting plans, signage, etc., as set forth below, and shall, as a condition precedent to the granting of said special use permit, require full adherence to said plans without deviation at any later construction date. Said submissions shall be at the same size and scale as required in Article VII, and shall conform to the development standards set forth in the Design Review Guidelines ²², and shall contain the following:
- b) Architectural Submittals. On a separate sheet(s), architectural submittals are required which shall include the following:
 - (1) Elevations, locations and dimensions of all wall openings, including windows, doors, and vents; for all sides of any proposed building or structure, including signs;
 - (2) Exterior lighting plans;
 - (3) Samples and/or descriptions and colors of all materials for proposed exterior treatments.
 - (4) Indication of roof pitch and materials.

- (5) Location of and screening method used for all roof mounted mechanical equipment.
- (6) Landscape Plans. On a separate sheet(s), landscape plans are required which shall include the following:
 - c) Location of existing trees and major shrubs that will be preserved. Proposed plantings and other landscape material, shown by type, size and number;
 - d) Provisions for pedestrian circulation;
 - e) Site furnishings, including location of and screen treatment for trash disposal and storage areas;
 - f) Location and appearance of all fences, walls, berms and other screening features; and
 - g) Location, dimension, slopes, and landscaping treatment of all drainage facilities.
 - h) A written description of the project.

3. DESIGN STANDARDS - PURPOSE

- a) Architectural styles, design themes, and site details including signs, lighting, pedestrian furniture, planting and paving, along with building materials, colors, textures and grade shall be compatible within the overall site design and shall preserve and enhance the character of the surrounding area. These details should blend with their surroundings to create a diverse, yet unified, street composition.
- b) Design Review Standards, which shall guide the recommendations of the Design Review Board, are contained in the publication entitled "Portsmouth Design Review Guidelines".
- c) While quality design is desirable everywhere, it is the intent of this ordinance that the Portsmouth Design Review Guidelines be more stringently applied in the Town Center District than in other zones in order to achieve the intent of the Town Center District per Article III.²³

FOOTNOTES

¹ Adopted September 9, 1997. New language supersedes any previous language on parking requirements in other articles in this Ordinance.

² Adopted February 4, 2008.

³ Adopted February 4, 2008.

⁴ Adopted February 4, 2008.

⁵ This subsection adopted February 4, 2008.

⁶ Adopted February 4, 2008.

⁷ Adopted February 4, 2008.

⁸ Adopted February 4, 2008.

⁹ Adopted February 4, 2008.

¹⁰ Adopted February 4, 2008.

¹¹ Adopted February 4, 2008.

¹² Adopted February 4, 2008.

¹³ Adopted February 4, 2008.

¹⁴ Adopted February 4, 2008.

¹⁵ Adopted February 4, 2008.

¹⁶ Adopted February 4, 2008.

¹⁷ Adopted February 4, 2008.

¹⁸ Adopted February 4, 2008.

¹⁹ Change ARTICLE IX, Specific Development Regulations Section B 4.a)(3) and Section B.6., the wording, from "special exception" to "special use permit" or any place it may appear.

This amendment shall take effect upon passage.

ADOPTED: August 15, 1994.

²⁰ Design Review along with a separate document entitled "Design Review Guidelines" was adopted on January 21, 2004. References to the Guidelines and the Design Review Board are contained in Articles VII, IX, and XI.

²¹ "and all properties within 500 ft. of proposed development" adopted October 10, 2004.

²² Adopted January 21, 2004.

²³ Adopted October 27, 2004.

ARTICLE X. SPECIAL CONDITIONS

Section A. General

1. In granting a variance or special use permit or in making any determination upon which it is required to pass after a public hearing under this zoning ordinance, the Zoning Board of Review may apply such special conditions that may, in the opinion of the board, be required to promote the intent and purposes of the comprehensive plan and the zoning ordinance of the town.
2. Failure to abide by any special conditions attached to a grant shall constitute a zoning violation.
3. Those special conditions shall be based on competent credible evidence on the record, be incorporated into the decision, and may include, but are not limited to, provisions for:
 - a) Minimizing adverse impact of the development upon other land, including the type, intensity, design, and performance of activities in order to prevent nuisance to and promote harmony with nearby property and with the environment;
 - b) Controlling the sequence of development, including when it must be commenced and completed;
 - c) Controlling the duration of use or development and the time within which any temporary structure must be removed;
 - d) Assuring satisfactory installation and maintenance of required public improvements;
 - e) Designating the exact location and nature of development, including but not limited to:
 - (1) setbacks from streets and neighboring property;
 - (2) screen fencing or screen evergreen planting;
 - (3) drainage facilities;
 - (4) lighting equipment;
 - (5) landscaping;
 - (6) traffic flow and controls.
 - f) Establishing detailed records by submission of drawings, maps, plats, or specifications.
4. Such special conditions may be in addition to those required elsewhere in this Ordinance. Where there is a conflict between conditions imposed herein and conditions set elsewhere in this Ordinance, the more stringent requirements shall apply.

ARTICLE XI. DEVELOPMENT PLAN REVIEW

A. Development plan review of applications for certain uses, as specified in this Ordinance, requiring a special-use permit or a variance, shall be conducted by the Planning Board and the Design Review Board, as applicable, and shall be advisory to the permitting authority.

B. Applications subject to Development Plan Review shall, immediately upon receipt of an application hereunder, refer the site plan and related documents, as required in this ordinance, to the Portsmouth Planning Board and the Design Review Board, as applicable, for review and advice. Two (2) copies each of the site plan and supportive documents required in Articles VII and IX shall be delivered to the Portsmouth Planning Board and the Design Review Board, plus whatever plans and documents are required by each Board for their review. The Design Review Board shall hold a special meeting(s) as required for its review, and report its recommendations to the Planning Board. Said Planning Board shall make a written report to the Zoning Board of Review within forty-five (45) days of receipt of said plan by the Planning Board at its next regularly scheduled meeting.

1. The Planning Board shall assume primary responsibility for the processing and approval of all development plan review applications. However, for all applications requiring Design Review, as stipulated in Article VII, the Planning Board shall rely upon the expertise of a Design Review Board, which is established as a subcommittee of the Planning Board for design review matters.

2. Where the decision of the Zoning Board of Review differs from the recommendations of the Portsmouth Planning Board, the reasons therefore shall be clearly stated in writing.

C. Applications which are materially changed after review by the Planning Board may, at the discretion of the Zoning Board of Review, be referred back to the Planning Board and the Design Review Board for further review.

D. Nothing herein shall be construed to permit waivers of any regulations unless approved by the permitting authority pursuant to this ordinance.

E. Preliminary plans may be submitted to the Planning Board and the Design Review Board for informal discussion, provided however, any tentative advisory opinion of a preliminary plan by the Planning Board and the Design Review Board shall not be binding upon the Planning Board, Design Review Board, or Zoning Board of Review.

ARTICLE XII. ADMINISTRATION AND ENFORCEMENT OF ZONING ORDINANCE

Section A. MAINTENANCE OF THE ZONING ORDINANCE

1. The persons charged with the administration and enforcement of the Zoning Ordinance shall be: (1) the Building Official of the Town of Portsmouth, whose minimum qualifications shall be official certification as a building official or inspector in the State of Rhode Island, together with a working knowledge of zoning principles and practices, and/or (2) the Zoning Enforcement Officer of the Town of Portsmouth, whose minimum qualifications shall be a working knowledge of zoning principles and practices. ⁱ
2. The Zoning Enforcement Officer shall have the power to:
 - a) Issue any required permits or certificates hereunder.
 - b) Collect required fees.
 - c) Keep records showing the compliance of uses of land.
 - d) Authorize commencement of uses or development under the provisions of the zoning ordinance.
 - e) Conduct inspections of suspected violations of this ordinance and of any special conditions imposed upon any development.
 - f) Issue of violation notices with required corrective action.
 - g) Collect fines for violations.
 - h) Perform such other duties and take such actions as may be assigned in the ordinance.
3. In order to provide guidance or clarification, the Zoning Enforcement Officer shall, upon written request, issue a zoning certificate or provide information to the requesting party as to his determination within fifteen (15) days of the written request. In the event that no written response is provided within that time, the requesting party shall have the right to appeal to the zoning board of review for the determination.
4. The Town Clerk shall be the custodian of the zoning ordinance and zoning map or maps created hereunder.
5. The Town Planner, or if none the Planning Board, shall be responsible:
 - a) For the maintenance and update of the text and zoning map comprising the zoning ordinance. Changes which impact the zoning map shall be depicted on the map within ninety (90) days of the authorized change(s); and
 - b) For review of the zoning ordinance at reasonable intervals; and whenever changes are made to the comprehensive plan of the town, for the identification of any changes necessary and for the forwarding of these changes to the Town Council.
6. Printed copies of the zoning ordinance and map(s) of the town shall be available to the general public and shall be revised to include all

amendments. A reasonable charge may be made for copies to reflect printing and distribution costs.

7. Upon publication of a zoning ordinance and map, and any amendments thereto, the Town Clerk shall send a copy, without charge, to the associate director of the division of planning of the department of administration of the state of Rhode Island, and the state law library.

Section B. APPLICATION PROCEDURE

1. All applications shall be made to the zoning enforcement officer on appropriate forms prescribed by the zoning enforcement officer. The zoning enforcement officer shall determine which provisions of this ordinance are applicable to the subject property and proposed development. He/she shall provide the applicant a zoning certificate as described in Section A. herein.
2. Should a special use permit and/or a variance be required to meet the provisions of this ordinance, or if the applicant wishes to appeal the decision of the zoning enforcement officer, the applicant may apply to the Zoning Board of Review for same as provided in Article XIII.
3. No building permit may be issued by the building inspector until a determination has been made by the zoning enforcement officer that all zoning requirements have been satisfied.

Section C. PREAPPLICATION CONFERENCE

1. A potential applicant for a development proposal which would be subject to a special use permit, development plan review or change in the zoning ordinance may request a preapplication conference with either the Zoning Enforcement Officer or the Town Planner, or the Planning Board. A preapplication conference is intended to allow the Town to:
 - a) Acquaint the applicant with the comprehensive plan and any specific plans that apply to the parcel, as well as the zoning and other ordinances that affect the proposed development;
 - b) Suggest improvements to the proposed design on the basis of a review of the sketch plan;
 - c) Advise the applicant to consult appropriate authorities on the character and placement of public utility services; and
 - d) Help the applicant to understand the steps to be taken to receive approval.
2. A preapplication conference is not mandatory.
3. Any preliminary advisory opinion rendered by the Zoning Enforcement Officer or the Town Planner, or the Planning Board may or may not be in writing, at his/her discretion, and shall not be binding upon him/herself, the Zoning Board of Review, the Planning Board, the Town Council, nor any other officer or agent of the Town.

Section D. FEES

A separate Fee Ordinance provides for reasonable fees, which are to be paid by the applicant for the adequate review and hearing of applications, the issuance of zoning certificates, and for the recording of the decisions thereon.

ⁱ Adopted June 13, 2005.

ARTICLE XIII. ZONING BOARD OF REVIEW

Section A. ESTABLISHMENT AND PROCEDURES

1. Appointment of members.

a) Members of the Zoning Board of Review shall be appointed by majority vote of the Town Council.

b) In case any vacancy occurs in said Board for any case or cause, the Town Council shall appoint a member to said Board to fill said vacancy for the remainder of the term of the member who has vacated his office.

c) The Zoning Board of Review shall consist of five (5) members, each to hold office for the term of five (5) years; provided, however, that the original appointments shall be made for terms of one, two (2), three (3), four (4), and five (5) years, respectively. The Zoning Board of Review shall also include two (2) alternates to be designated as the first [1st] and second [2nd] alternate members, their terms to be set by the ordinance, but not to exceed five (5) years.

(1) Members of zoning boards of review serving on the effective date of adoption of a zoning ordinance under this chapter shall be exempt from provisions of this section respecting terms of originally appointed members until the expiration of their current terms.

2. Alternates

Alternate members shall sit and may actively participate in hearings. The first and second alternates shall be designated by the chairperson on a case by case basis. The first alternate shall vote if a member of the board is unable to serve at a hearing and the second shall vote if two (2) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate.

3. Removal of a Member

Members of the Zoning Board of Review may be removed from the Board for due cause by majority vote of the Town Council.

4. Organization of the Board

a) The Zoning Board of Review shall annually elect a chairperson, a vice chairperson and a secretary. The chairperson, or in his or her absence, the vice chairperson, shall preside over all meetings of the Board.

5. Expenses

a) Individual members of the Board may be reimbursed for expenses incurred in the performance of official duties with approval of the Chair.

b) The Zoning Board of Review may engage legal, technical, or clerical assistance to aid in the discharge of its duties.

c) The Town may provide for remuneration to members of the Zoning Board of Review.

6. Procedures Generally

a) The Zoning Board of Review shall adopt and maintain written rules of procedure, which shall be available to any applicant or the general public at the office of the Zoning Enforcement Officer. Said rules of procedure shall include, at a minimum, a mailing address to which appeals and correspondence to the Zoning Board of Review shall be sent, and an office where records and decisions shall be filed.

(1) In case of conflict between such rules of procedure and this ordinance, the provisions of this ordinance shall apply.

b) The chairperson, or in his or her absence, the vice chairperson, may administer oaths and compel the attendance of witnesses by the issuance of subpoenas.

c) No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter.

7. Any petition for a variance or a special use permit to the Zoning Board of Review of the said Town, said petition shall be accompanied by a fee as prescribed by the Town of Portsmouth Ordinance pertaining to fees.

Section B. APPLICATION PROCEDURE

1. All applications including applications requests for variances, special use permits and appeals from a ruling of the zoning enforcement officer shall be made on forms as provided by the rules of the Board and the written ruling or decision of the enforcement official together with all other papers, plans and data constituting the record of the case shall be transmitted to the Board. All such applications must include a completed form or forms as specified by the Zoning Board of Review plus specific information required for the subject matter by this Ordinance.

2. Completed applications shall be delivered to the Zoning Enforcement Officer as specified in the written rules of procedure of the Zoning Board of Review, but in no case less than one week prior to the date of publication of the first public notice on the subject matter. The Zoning Board of Review shall decline to hear any application which requires public notice for which a substantially complete application has not been submitted by the deadline, except applications pertaining directly to life safety requirements.

3. A time period of twelve (12) months shall be required to pass before a successive similar application to the Zoning Board of Review may be filed.

Section C. POWERS AND DUTIES OF ZONING BOARD OF REVIEW.

1. The Zoning Board of Review shall hold a public hearing on all appeals including appeals in which applications for variances are involved and on all requests for special use permits and shall publish a notice of such hearings and give notice thereof to the parties in interest, as required by this Ordinance.

2. Public Notice

Notice of all public hearings held by the Zoning Board of Review shall be as follows:

a) A notice shall be published in the legal notice section of a newspaper of general circulation in the Town of Portsmouth once per week for three (3) weeks, one of which may include the week of the hearing and one of which must appear at least fourteen (14) days prior to the date of the hearing.

b) Notice of hearing, which may be a copy of the newspaper notice, shall be sent by first class mail to the applicant, and to all abutters, as defined in Article II Definitions. Notice shall also be mailed to the public water district if the subject of the application is within 2,000 feet of a public water source.

c) All notices shall specify the general nature of the hearing, its date, place and time. The notice shall also include the street address of the subject property.

d) A supplemental notice shall be posted at the office of the Town Clerk. This posting shall be for information purposes only and shall not constitute required notice of a public hearing.

e) The cost of notification, including actual advertising and mailing costs, shall be borne by the applicant.

3. The Zoning Board of Review shall have the following powers and duties:

a) To hear and decide appeals in a timely fashion where it is alleged there is error in any order, requirement, decision, or determination made by an administrative officer or agency in the enforcement or interpretation of this chapter, or of any ordinance adopted pursuant hereto. Such appeals shall also be governed by the provisions of Article XIV.

b) To authorize, upon application, in specific cases of hardship, variances in the application of the terms of the zoning ordinance, pursuant to Article VI. Section D.

c) To authorize, upon application, in specific cases, special-use permits, pursuant to Article VII.

d) To refer matters to the planning board, or to other boards or agencies of the Town as the Zoning Board of Review may deem appropriate, for findings and recommendations;

e) To hear and decide other matters, according to the terms of the ordinance or other statutes, and upon which the board may be authorized to pass under this ordinance or other statutes.

4. The Zoning Board of Review is required to vote as follows:

a) Five (5) active members shall be necessary to conduct a hearing. As soon as a conflict occurs for a member, that member shall recuse himself or herself, shall not sit as an active member, and take no part in the conduct of the hearing. Only five (5) active members shall be entitled to vote on any issue;

b) The concurring vote of three (3) of the five (5) members of the Zoning Board of Review sitting at a hearing shall be necessary to reverse any order, requirement, decision, or determination of any zoning administrative officer from whom an appeal was taken; and

c) The concurring vote of four (4) of the five (5) members of the Zoning Board of Review sitting at a hearing shall be required to decide in favor of an applicant on any matter within the discretion of the board upon which it is required to pass under the ordinance, including variances and special-use permits.

d) The concurring vote of three (3) of the five (5) members of the Zoning Board of Review sitting at a hearing shall be necessary to determine if, during the course of any hearing, an application is essentially changed and if said application shall be allowed to continue or shall require a new application.

Section D. DECISIONS AND RECORDS OF ZONING BOARD OF REVIEW

1. Following a public hearing, the Zoning Board of Review shall render a decision within a reasonable period of time. The Zoning Board of Review shall include in its decision all findings of fact and conditions, showing the vote of each member participating thereon, and the absence of a member or his or her failure to vote. Decisions shall be recorded and filed in the office of the Zoning Board of Review within thirty (30) working days from the date when the decision was rendered, and shall be a public record.

2. The Zoning Board of Review shall keep written minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations, findings of fact, and other official actions, all of which shall be recorded and filed in the office of the Zoning Board of Review in an expeditious manner upon completion of the proceeding. For any proceeding in which the right of appeal lies to the superior or Supreme Court, the Zoning Board of Review shall have the minutes taken either by a competent stenographer or recorded by a sound-recording device.

3. Any decision by the Zoning Board of Review, including any special conditions attached thereto, shall be mailed to the applicant, to the zoning enforcement officer of the Town, and to the associate director of the division of planning of the Rhode Island department of administration. Any decision evidencing the granting of a variance, modification, or

special use shall also be recorded in the land evidence records of the Town.

4. All determinations of the Board shall be made in accordance with the comprehensive plan specified in Title 45 Chapter 24 of the General Law of 1956 as amended.

5. In authorizing special use permits, the Board shall be bound by the conditions for special uses which are set out in this Ordinance and in authorizing either special use permits or variances the Board may impose such further conditions as are deemed necessary for the protection of neighboring properties and the public interest, as further described in Article X. Special Conditions.

Section E. PARTICIPATION IN ZONING HEARINGS

Participation in a zoning hearing or other proceeding by a party shall not be a cause for civil action or liability except for acts not in good faith, intentional misconduct, a knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.

ARTICLE XIV. APPEALS TO THE ZONING BOARD OF REVIEW

Section A. RIGHT OF APPEAL

1. An appeal from any decision of the Zoning Enforcement Officer may be taken to the Zoning Board of Review by an aggrieved party. (The definition of an aggrieved party is provided in Article II, Definitions.)
2. An appeal from a decision of the Zoning Board of Review may be taken by an aggrieved party to the superior court, per the provisions of Article XVII herein and R.I. Title 45 Chapter 24 of the General Law of 1956 as amended.

Section B. APPEALS TO ZONING BOARD OF REVIEW

1. Any appeal to the Zoning Board of Review from a decision of the Zoning Enforcement Officer shall be taken within a reasonable time of the date of the recording of the decision by the Zoning Enforcement Officer by filing with the officer from whom the appeal is taken and with the Zoning Board of Review a notice of appeal, on forms as provided by the rules of the Board, specifying the ground thereof.
2. The officer from whom the appeal is taken shall forthwith transmit to the Zoning Board of Review all the papers constituting the record upon which the action appealed from was taken. Notice of the appeal shall also be transmitted to the Planning Board.

Section C. STAY OF PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer from whom the appeal is taken certifies to the Zoning Board of Review, after an appeal shall have been duly filed, that by reason of facts stated in the certificate a stay would in the officer's opinion cause imminent peril to life or property. In that case, proceedings shall not be stayed other than by a restraining order, which may be granted by a court of competent jurisdiction on application thereof and upon notice to the officer from whom the appeal is taken on due cause shown.

Section D. PUBLIC HEARING BY ZONING BOARD OF REVIEW

1. The Zoning Board of Review shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties of interest, and decide the matter within a reasonable time.
 - a) Notice shall be given per the provisions of Article XIII Section B.
2. Upon the hearing, any party may appear in person or by agent or by attorney. Said hearing shall be conducted according to the written rules of procedure adopted by the Zoning Board of Review, and the provisions of Article XIII herein.

3. The cost of any notice required for the hearing shall be borne by the appellant.

Section E. DECISIONS AND RECORDS OF ZONING BOARD OF REVIEW

In exercising its powers the Zoning Board of Review may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly and may modify the order, requirement, decision, or determination appealed from and may make such orders, requirements, decisions, or determinations as ought to be made, and to that end shall have the powers of the officer from whom the appeal was taken. All decisions and records of the Zoning Board of Review respecting appeals shall conform to the provisions of Article XIII herein.

ARTICLE XV. ADOPTION OF ORDINANCE AND AMENDMENTS**Section A. POWER OF COUNCIL TO ADOPT**

1. For the purpose of promoting the public health, safety, morals, and general welfare, the Town Council shall have the power, in accordance with the provisions of this Article, to adopt, amend, or repeal, and to provide for the administration, interpretation, and enforcement of, the zoning ordinance. The provisions of the zoning ordinance shall be set forth in text and map(s), and may incorporate charts or other material.

2. The zoning ordinance, and all amendments thereto, shall be consistent with the Town's comprehensive plan, as described in chapter 45-22.2 of the R.I. General laws, and shall provide for the implementation of the Town's comprehensive plan.

Section B. PROCEDURE FOR ADOPTION OR AMENDMENT

1. Proposals for adoption, amendment, or repeal of the zoning ordinance or zoning map(s) shall be submitted to the Town Clerk.

2. Immediately upon receipt of the proposal, the Town Clerk shall refer the proposal to the Town Council at their next regularly scheduled meeting, and to the Planning Board for study and recommendation.

a) The Planning Board shall, in turn, notify and seek the advice of the Town Planner and shall report to the Town Council within forty-five (45) days after receipt of the proposal, giving its findings and recommendations as prescribed in Section C herein.

b) Where a proposal for adoption, amendment, or repeal of the zoning ordinance or zoning map is made by the Town Planning Board, the requirements for study by the board may be waived, provided that the proposal by the Planning Board include its findings and recommendations pursuant to Section C. herein.

3. The Town Council shall hold a public hearing within sixty-five (65) days of receipt of a proposal at a regularly scheduled meeting, giving proper notice as prescribed in Section D herein. The Town Council shall render a decision on any proposal within forty-five (45) days after the date of completion of the public hearing.

4. The provisions of this section pertaining to deadlines shall not be construed to apply to any extension consented to by an applicant.

5. The proposals shown in the public notice may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any alteration or amendment must be presented for comment in the course of the hearing.

Section C. REVIEW BY PLANNING BOARD

Among its findings and recommendations to the Town Council with respect to a proposal for adoption, amendment, or repeal of the zoning ordinance or zoning map, the Planning Board shall:

1. Include a statement on the general consistency of the proposal with the comprehensive plan of the Town, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and
2. Include a demonstration of recognition and consideration of each of the applicable purposes of zoning, as presented in Article I.

Section D. NOTICE AND HEARING REQUIREMENTS

1. No zoning ordinance shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the Town Council. At said hearing opportunity shall be given to all persons interested to be heard upon the matter of the proposed ordinance.

2. General Notice Requirements

The Town Council shall first give notice of the public hearing by publication of notice in a newspaper of general circulation within the Town at least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held.

a) Written notice, which may be a copy of the newspaper notice, shall be mailed to the associate director of the division of planning of the Rhode Island department of administration, and, where applicable, to the parties specified in subsections (B), (C), (D), and (E) of this section, at least two (2) weeks prior to the hearing.

b) The newspaper notice shall be published as a display advertisement, using a type size at least as large as the normal type size used by the newspaper in its news articles, and shall:

- (1) Specify the place of the hearing and the date and time of its commencement;
- (2) Indicate that adoption, amendment, or repeal of the zoning ordinance is under consideration;
- (3) Contain a statement of the proposed amendments to the ordinance that may be printed once in its entirety, or summarize and describe the matter under consideration;
- (4) Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and
- (5) State that the proposals shown thereon may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any alteration or amendment must be presented for comment in the course of the hearing.

3. Notice for a General Amendment

Where a proposed general amendment to an existing zoning ordinance, having town-wide or district wide effect, includes changes in an existing zoning map, public notice shall be given as required by subparagraph 2 of this section.

4. Notice for Specific Lot(s) Change(s)

Where a proposed amendment to an existing ordinance includes a specific change in the zoning district map applicable to specific parcels, but does not effect districts generally, public notice shall be given as required by subparagraph 2 of this section, with the additional requirements that:

- a) Notice shall include a map showing the existing and proposed boundaries, zoning district boundaries, and existing streets and roads and their names, and town boundaries where appropriate; and
- b) Written notice of the date, time, and place of the public hearing and the nature and purpose thereof shall be sent to all owners of real property whose property is located in or within not less than two hundred feet (200') of the perimeter of the area proposed for change, whether within the Town or within an adjacent Town.
- c) The notice shall be sent by registered or certified mail to the last known address of the owners, as shown on the current real estate tax assessment records of the Town in which the property is located.

5. Notice of a public hearing shall be sent by first class mail to the Town Council of any Town to which one or more of the following pertain:

- (1) Which is located in or within not less than two hundred feet (200') of the boundary of the area proposed for change; or
- (2) Where there is a public or quasi-public water source, or private water source that is used or is suitable for use as a public water source, within two thousand feet (2,000') of any real property that is the subject of a proposed zoning change, regardless of municipal boundaries.

6. Notice of a public hearing shall be sent to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or surface watershed that is used or is suitable for use as a public water source and that is within two thousand feet (2,000') of any real property which is the subject of a proposed zoning change, provided, however, that the governing body of any state or municipal water department or agency, special water district, or private water company has filed with the building inspector in the Town a map survey, which shall be kept as a public record, showing areas of surface water resources and/or watersheds and parcels of land within two thousand feet (2,000') thereof.

7. No defect in the form of any notice under this section shall render any ordinance or amendment invalid, unless the defect is found to be intentional or misleading.

8. Costs of any notice required under this section shall be borne by the applicant.

Section E. CONDITIONS SET ON ZONE CHANGES

1. In granting the zoning ordinance amendment, notwithstanding the provisions of Article V. Permitted Uses, the Town Council may limit the change to one of the permitted uses in the zone to which the subject land is rezoned, and impose such limitations, conditions, and restrictions, including, without limitation:

- a) Requiring the petitioner to obtain a permit or approval from any and all state or local governmental agencies or instrumentalities having jurisdiction over the land and use which are the subject of the zoning change;
- b) Those relating to the effectiveness or continued effectiveness of the zoning change; and/or
- c) Those relating to the use of the land; as the Council deems necessary.

2. The Town Planner, or if none the Planning Board, shall cause the limitations and conditions so imposed to be clearly noted on the zoning map and recorded in the land evidence records, provided, however, in the case of a conditional zone change, the limitations, restrictions, and conditions shall not be noted on the zoning map until the zone change has become effective.

3. If the permitted use for which the land has been rezoned is abandoned or if the land is not used for the requested purpose for a period of two (2) years or more after the zone change becomes effective, the Town Council may, after a public hearing as hereinbefore set forth, change the land to its original zoning use before the petition was filed.

4. If any limitation, condition, or restriction in an ordinance is held to be invalid by a court in any action, that holding shall not cause the remainder of the ordinance to be invalid.

Section F. CREATION OF VESTED RIGHTS

1. Any application for development that is substantially complete and has been submitted for approval to the appropriate review agency of the Town, as specified in this Ordinance, prior to enactment of a new zoning ordinance or amendment shall be reviewed according to the regulations applicable in the zoning ordinance in force at the time the application was submitted. A Certification of Completeness or written notification to an applicant that an application is not substantially complete shall be issued by the Zoning Enforcement Officer within five (5) working days of his/her receipt of an application and required supportive materials.

- a) "Substantially Complete" for this purpose shall mean that the application and required supportive materials are complete and sufficient for the Zoning Enforcement Officer, Planning Board or the Zoning Board of Review to make a fully informed decision on an application.

2. Any application for development under the provisions of this section which is not utilized within a period of one (1) year from the date of its authorization shall be void unless, upon written request of the applicant, the Zoning Board of Review grants an extension, provided that not more than one (1) such extension for a period of six (6) months may be granted.

- a) If written proof from the Portsmouth Water and Fire District is provided showing that the applicant is unable to secure a tie-in to the Portsmouth Water and Fire District's water supply, then the Zoning Board of Review shall grant an extension for a period of one (1) year, provided that the applicant demonstrates reasonable diligence in attempting to secure such tie-in.

b) If written proof from an applicable State or Federal agency is provided showing that the applicant is unable to secure the necessary permits from said agency within the time allotted hereunder, then the Zoning Board of Review shall grant an extension for a period of one (1) year, provided that the applicant demonstrates reasonable diligence in attempting to secure such permit.

ARTICLE XVI. VIOLATIONS

A. It shall be the duty of the Town Solicitor, on authorization by the Town Council wherever a violation or a contemplated violation of this Ordinance is brought to its attention, to institute due legal proceedings to compel compliance with said Ordinance and to restrain the erection, alteration or use of any building, structure or other thing erected or used in violation of the provisions of this Ordinance.

B. The Town may also cause suit to be brought in the supreme or superior court, or any municipal court, including a municipal housing court having jurisdiction, in the name of the town, to restrain the violation of, or to compel compliance with, the provisions of this zoning ordinance. The Town may consolidate an action for injunctive relief and/or fines under the ordinance in the superior court.

C. Any person, firm or corporation, and any architect or engineer, building contractor or other person, employed by an applicant or developer, who shall violate or assist in the violation or fail to comply with the requirements of any provision of this Ordinance, or for a violation of any terms or conditions of any action imposed by the Zoning Board of Review or of any other agency or officer charged in this ordinance with enforcement of any of its provisions, upon conviction thereof shall be punishable by a fine of not more than five hundred (\$500.00) dollars for each offense and each day of the existence of any such violation shall be deemed a separate offense, all such fines shall inure to the benefit of the Town.

ARTICLE XVII. APPEALS TO SUPERIOR COURT

Section A. APPEALS TO A DECISION OF THE ZONING BOARD OF REVIEW

1. An aggrieved party may appeal a decision of the Zoning Board of Review to the superior court for Newport County by filing a complaint setting forth the reasons of appeal within twenty (20) days after the decision has been recorded and posted in the office of the Town Clerk. The decision shall be posted in a location visible to the public in the Town Hall for a period of twenty (20) days following the recording of the decision. The Zoning Board of Review shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies thereof, together with such other facts as may be pertinent, with the clerk of the court within thirty (30) days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the members of the Zoning Board shall be made parties to the proceedings. The appeal shall not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make such other orders as it deems necessary for an equitable disposition of the appeal.
2. If, before the date set for hearing in the Superior Court, an application is made to the court for leave to present additional evidence before the Zoning Board of Review and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for the failure to present it at the hearing before the Zoning Board of Review, the court may order that the additional evidence be taken before the Zoning Board of Review upon conditions determined by the court. The Zoning Board of Review may modify its findings and decision by reason of the additional evidence and shall file that evidence and any new findings or decisions with the Superior Court.
3. The court shall consider the record of the hearing before the Zoning Board of Review and, if it shall appear to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present the evidence in open court.
4. The court will not substitute its judgment for that of the Zoning Board of Review as to the weight of the evidence on questions of fact. The court may affirm the decision of the Zoning Board of Review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:
 - a) In violation of constitutional, statutory, or ordinance provisions;
 - b) In excess of the authority granted to the Zoning Board of Review by statute or ordinance;
 - c) Made upon unlawful procedure;
 - d) Affected by other error of law;
 - e) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Section B. JUDICIAL AID IN ENFORCEMENT

The Supreme Court and the Superior Court, within their respective jurisdictions, or any justice of either of those courts in vacation, shall, upon due proceedings in the name of the Town, instituted by its Town Solicitor, have power to issue any extraordinary writ or to proceed according to the course of law or equity or both:

1. To restrain the erection, alteration, or use of any building, structure, sign, or land erected, altered, or used in violation of the provisions of this zoning ordinance, and to order its removal or abatement as a nuisance;
2. To compel compliance with the provisions of this zoning ordinance;
3. To order the removal by the property owner of any building, structure, sign, or improvement existing in violation of this zoning ordinance, and to authorize some official of the Town, in the default of the removal by the owner, to remove it at the expense of the owner;
4. To order the reimbursement for any work or materials which shall have been done or furnished by or at the cost of the Town;
5. To order restoration by the owner, where practicable; and/or
6. To issue fines and other penalties.

Section C. APPEAL OF ENACTMENT OF OR AMENDMENT TO ZONING ORDINANCE

1. An appeal of an enactment of or an amendment to a zoning ordinance may be taken to the Superior Court of Newport County by filing a complaint, as set forth herein, within thirty (30) days after the enactment or amendment has become effective. The appeal may be taken by an aggrieved party or by any legal resident or landowner of the Town or by any association of residents or landowners of the Town. The appeal shall not stay the enforcement of the zoning ordinance, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make such other orders as it deems necessary for an equitable disposition of the appeal.
2. The complaint shall set forth with specificity the area or areas in which the enactment or amendment does not conform with the comprehensive plan and/or the manner in which it constitutes a taking of private property without just compensation.
3. The court shall first consider whether the enactment or amendment of the zoning ordinance is in conformance with the comprehensive plan. If the enactment or amendment is not in conformance with the comprehensive plan, then the court shall invalidate the enactment or the amendment, or those parts of the enactment or amendment which are not in conformance

with the comprehensive plan. The court shall not revise the ordinance to conform with the comprehensive plan, but may suggest appropriate language as part of the court decision.

4. In the case of an aggrieved party, where the court has found that the enactment or amendment of the zoning ordinance is in conformance with the comprehensive plan, then the court shall next determine whether the enactment or amendment works as a taking of property from the aggrieved party. If the court determines that there has been a taking, the court shall remand the case to the legislative body of the Town, with its findings that a taking has occurred, and order the Town to either provide just compensation or rescind the enactment or amendment within thirty (30) days.
5. The Superior Court shall retain jurisdiction, in the event that the aggrieved party and the Town do not agree on the amount of compensation, in which case the Superior Court shall hold further hearings to determine and to award compensation. Furthermore, the Superior Court shall retain jurisdiction to determine the amount of an award of compensation for any temporary taking, if that taking shall exist.
6. The court may, in its discretion, upon motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, as set forth herein, including a Town.

ARTICLE XVIII. VALIDITY AND SEVERABILITY

1. Where the subject matter herein contained is elsewhere regulated, the more stringent Ordinance or Regulation shall prevail.

2. If any provision of this Ordinance or of any rule, regulation, or determination made thereunder, or the application thereof to any person, agency, or circumstance, is held invalid by a court of competent jurisdiction, the remainder of the Ordinance, rule, regulation, or determination and the application of the provisions to other persons, agencies, or circumstances shall not be affected thereby. The invalidity of any section or sections of this Ordinance shall not affect the validity of the remainder of the Ordinance.

ARTICLE XIX. LOW AND MODERATE INCOME HOUSING

Section A.

Authority to grant a comprehensive permit. In accordance with Title 45, Chapter 53 of the Rhode Island General Laws, the Low and Moderate Income Housing Act, the Portsmouth Planning Board is designated as the local review board, and shall have the power to issue a comprehensive permit for a qualifying low and moderate income housing project.

Section B.

Procedure for approval of construction of low or moderate income housing. -

a) Any applicant proposing to build low or moderate income housing may submit to the Planning Board a single application for a comprehensive permit to build that housing in lieu of separate applications to the applicable local boards. This procedure is only available for proposals in which at least twenty-five percent (25%) of the housing is low or moderate income housing. The application and review process for a comprehensive permit shall be as follows:

1. Submission Requirements. Applications for a comprehensive permit shall be submitted to the Administrative Officer of the Planning Board and shall include:

a) A letter of eligibility issued by the Rhode Island Housing Mortgage Finance Corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in such form as may be prescribed by the Town of Portsmouth for a municipal government subsidy; and

b) A written request to the Planning Board to submit a single application to build or rehabilitate low or moderate income housing in lieu of separate applications to the applicable local boards. The written request shall identify the specific sections and provisions of applicable local ordinances and regulations from which the applicant is seeking relief; and

c) A proposed timetable for the commencement of construction and completion of the project; and

d) A sample land lease or deed restriction with affordability liens that will restrict use as low and moderate income housing in conformance with the guidelines of the agency providing the subsidy for the low and moderate income housing, but for a period of not less than thirty (30) years; and

e) Identification of an approved entity that will monitor the long-term affordability of the low and moderate income units; and

f) A reasonably detailed financial pro-forma, or a copy of the financial pro-forma provided to the RI Housing and Mortgage Finance Corp., for the proposed development; and

g) For comprehensive permit applications:

(i) Not involving major land developments or major subdivisions including, but not limited to, applications seeking relief from specific provisions of the zoning ordinance, or involving administrative subdivisions, minor land developments or minor subdivisions, or other local ordinances and regulations: those items required by local regulations promulgated pursuant to applicable state law, with the exception of evidence of state or federal permits; and for comprehensive permit applications; and

(ii) Involving major land development projects and major subdivisions, unless otherwise agreed to by the applicant and the town; those items included in the master plan checklist for low or moderate income housing as provided in the Town of Portsmouth Land Development and Subdivision Regulations promulgated pursuant to § 45-23-40 of the Rhode Island General Laws. Subsequent to master plan approval, the applicant must submit those items included in the preliminary plan checklist for low or moderate income housing for a major land development project or major subdivision as provided in the Land Development and Subdivision Regulations promulgated pursuant to § 45-23-41, with the exception of evidence of state or federal permits.

(iii) All required state and federal permits must be obtained prior to the final plan approval or the issuance of a building permit. Such final plan submission shall include written evidence that the Plans approved at the master plan or preliminary stages have not materially changed.

h) The Town may impose fees on comprehensive permit applications that are consistent with but do not exceed fees that would otherwise be assessed for a project of the same scope and type but not proceeding as a comprehensive permit application, provided, however, that the imposition of such fees shall not preclude a showing by a non-profit applicant that the fees make the project financially infeasible; and

i) Notwithstanding the submission requirements set forth above, the Planning Board may request additional, reasonable documentation throughout the public hearing, including, but not limited to, opinions of experts, credible evidence of application for necessary federal and/or state permits and/or financial assistance, statements and advice from other local boards and officials.

2. Certification of Completeness. The application must be certified complete or incomplete by the Administrative Officer according to the provisions of the Land Development and Subdivision Regulations provided, however, that for a major land development or major subdivision, the certificate for a master plan shall be granted within thirty (30) days and for a preliminary plan shall be granted within forty-five (45) days. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the Administrative Officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the Administrative Officer be required to certify a corrected submission as complete or incomplete less than fourteen (14) days after its resubmission. If the Administrative Officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

3. Pre-application Conference. Where the comprehensive permit application proposal is a major land development project or a major subdivision pursuant to the Land Development and Subdivision Regulations the Planning Board may require an applicant proposing a project under this section to first schedule a pre-application conference with the Planning Board, the Technical Review

Committee established pursuant to the Land Development and Subdivision Regulations, or with the Administrative Officer for the Planning Board and other local officials, as appropriate. To request a pre-application conference, the applicant shall submit a short description of the project in writing including the number of units, type of housing, as well as a location map. The purpose of the pre-application conference shall be to review a concept plan of the proposed development. Upon receipt of a request by an applicant for a pre-application conference, the Town has thirty (30) days to schedule and hold the pre-application conference. If thirty (30) days has elapsed from the filing of the pre-application submission and no pre-application conference has taken place, nothing shall be deemed to preclude an applicant from thereafter filing and proceeding with an application for a comprehensive permit.

4. Review of Applications. An application filed in accordance with this section shall be reviewed by the Planning Board at a public hearing in accordance with the following provisions:

a) *Notification.* Upon issuance of a certificate of completeness for a comprehensive permit, the Planning Board shall immediately notify each local board, as applicable, of the filing of the application, by sending a copy to the local boards and to other parties entitled to notice of hearings on applications under the zoning ordinance and/or Land Development and Subdivision Regulations as applicable.

b) *Public Notice.* Public notice for all public hearings will be the same notice required under the Land Development and Subdivision Regulations for a public hearing for a preliminary plan promulgated in accordance with Article VI, Section E thereof. The cost of notice shall be paid by the applicant.

c) *Review of minor projects.* The review of a comprehensive permit application involving only minor land developments or minor subdivisions or requesting zoning ordinance relief or relief from other local regulations or ordinances not otherwise addressed in this subsection, shall be conducted following the procedures in the Land Development and Subdivision Regulations, with the exception that all minor land developments or minor subdivisions under this section are required to hold a public hearing on the application, and within ninety-five (95) days of issuance of the certificate of completeness, or within such further time as is agreed to by the applicant and the Planning Board, render a decision.

d) *Review of major projects.* In the review of a comprehensive permit application involving a major land development and/or major subdivision, the Planning Board shall hold a public hearing on the master plan and shall, within one hundred and twenty (120) days of issuance of the certification of completeness, or within such further amount of time as may be agreed to by the Planning Board and the applicant, render a decision. Preliminary and final plan review shall be conducted according to the Land Development and Subdivision Regulations except as otherwise specified in this section.

e) *Required findings.* In taking final action on an application, the Planning Board shall make positive findings, supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted, on each of the following standard provisions, where applicable:

(i) The proposed development is consistent with local needs as identified in the comprehensive community plan with particular emphasis on the Town's affordable housing plan and/or has satisfactorily addressed the issues where there may be inconsistencies.

(ii) The proposed development is in compliance with the standards and provisions of the Town's zoning ordinance and Land Development and Subdivision Regulations, and/or where expressly varied or waived local concerns that have been affected by the relief granted do not outweigh the state and local need for low and moderate income housing.

(iii) All low and moderate income housing units proposed are integrated throughout the development; are similar in scale and architectural style to the market rate units within the project; and will be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units.

(iv) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval.

(v) There will be no significant negative impacts on the health and safety of current or future residents of the community, in areas including, but not limited to, safe circulation of pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability of potable water, adequate surface water run-off, and the preservation of natural, historical or cultural features that contribute to the attractiveness of the community.

(vi) All proposed land developments and all subdivisions lots will have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered compliance with this requirement.

(vii) The proposed development will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable, unless created only as permanent open space or permanently reserved for a public purpose on the approved, recorded plans.

f) The Planning Board has the same power to issue permits or approvals that any local board or official who would otherwise act with respect to the application, including, but not limited to, the power to attach to the permit or approval, conditions, and requirements with respect to height, site plan, size, or shape, or building materials, as are consistent with the terms of this section.

g) In reviewing the comprehensive permit request, the Planning Board may deny the request for any of the following reasons:

(i) if the Town has an approved affordable housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing plan;

(ii) if the proposal is not consistent with local needs, including, but not limited to, the needs identified in its approved comprehensive plan, and/or zoning ordinances and procedures promulgated in conformance with the comprehensive plan;

(iii) if the proposal is not in conformance with the comprehensive plan;

(iv) if the community has met or has plans to meet the goal of ten percent (10%) of the year-round units in the Town as defined in § 45-53-3(2)(i) of the Rhode Island General Laws being low and moderate income housing; or

(v) if concerns for the environment and the health and safety of current residents have not been adequately addressed.

h) All Planning Board decisions on comprehensive permits shall be by majority vote of the membership of the board and may be appealed by the applicant to the State Housing Appeals Board.

i) If the public hearing is not convened or a decision is not rendered within the time allowed in subsections B.4. c) and d), the application is deemed to have been allowed and the relevant approval shall issue immediately; provided, however, that this provision shall not apply to any application remanded for hearing, where more than one application has been remanded for hearing provided for in § 45-53-6(f)(2) of the Rhode Island General Laws.

5. Appeal. Any person aggrieved by the issuance of an approval may appeal to the Supreme Court.

6. Expiration of Comprehensive Permits. A comprehensive permit shall expire unless construction is started within twelve (12) months and completed within sixty (60) months of final plan approval unless a longer and/or phased period for development is agreed to by the Planning Board and the applicant. Low and moderate income housing units shall be built and occupied prior to, or simultaneous with the construction and occupancy of market rate units.

7. Limit on Comprehensive Permit Applications. The Town may limit the annual total number of dwelling units in comprehensive permit applications from for-profit developers to an aggregate of one percent (1%) of the total number of year-round housing units in the town, as recognized in the affordable housing plan and notwithstanding the timetables set forth elsewhere in this section, the Planning Board shall have the authority to consider comprehensive permit applications from for-profit developers, which are made pursuant to this paragraph, sequentially in the order in which completed applications are submitted.

8. Annual Reports Required. The Planning Board shall report the status of implementation to the Housing Resources Commission pursuant to § 42-128-4 of the Rhode Island General Laws, including the disposition of any applications made under the plan, as of June 30, 2006, by September 1, 2006 and for each June 30 thereafter by September 1 through 2010, as further provided in Title 45, Section 45-53-4 (4) (xiii) of the Rhode Island General Laws.

9. Remanded Applications. Notwithstanding the provisions of § 45-53-4 in effect on February 13, 2004, to commence hearings within thirty (30) days of receiving an application remanded by the State Housing Appeals Board pursuant to § 45-53-6(f)(2) shall be heard as herein provided; in any town with more than one remanded application, applications may be scheduled for hearing in the order in which they were received, and may be taken up sequentially from the date they are remanded, with the thirty (30) day requirement for the initiation of hearings, commencing upon the decision of the earlier filed application.

Section C. Filing Fees

An applicant seeking approval of a comprehensive permit under the provisions of this Section shall pay to the Town, upon submission of an application to the Administrative Officer, a filing fee to cover the costs of processing the application. The check shall be payable to the Town of Portsmouth. Said fee shall equal the cumulative fees which would be associated with approval of the project if it did not qualify for review as a comprehensive permit.

Section D. Effective Date

(1) This section shall take effect on September 30, 2005.

(2) No for-profit developer shall submit a new application for comprehensive permits until September 30, 2005, except by mutual agreement with the Planning Board.

E. DUPLEX UNITS

1. Notwithstanding the provisions of Article IV Section B "Land Space Requirements Table", duplex housing structures in which at least one of the units meets the definition of "low and moderate income housing" as provided in Article II Section B shall meet the following dimensional requirements;

Zoning District	Min. Lot Size	Min. Lot Area per Dwelling Unit	Min. Lot Frontage	Minimum Yard Setbacks			Maximum Bldg. Height		Max. % Lot Coverage
				Front	Rear	Side	Stories	Feet	
R-10	15,000	7,500	100'	20'	20'	10'	2-1/2	35'	20%
R-20	30,000	15,000	110'	30'	30'	15'	2-1/2	35'	20%
R-30	45,000	22,500	125'	30'	30'	20'	2-1/2	35'	20%
R-40	60,000	30,000	125'	30'	30'	20'	2-1/2	35'	20%
R-60	90,000	45,000	200'	50'	50'	50'	2-1/2	35'	10%

2. The "Low or moderate income" unit shall have substantially the same exterior appearance as the market rate unit, and shall be of similar size as the market rate unit. The "Low or moderate income housing" unit shall be constructed at the same rate of development as the market rate unit, and be offered for sale or rental at substantially similar times as the market rate units.

All other provisions of Article IV. shall remain in force.

The Planning Board shall hear and rule upon all applications under this section.

F. RESIDENTIAL MULTI-FAMILY INCENTIVE DISTRICT

This section applies to Multifamily Housing developments located in the Multifamily Incentive District, as defined in Article III Section J, in which at least 25% of the units are "Low or moderate income housing", as defined in Article II. Such proposals shall be referred to the Planning Board, which shall have full review and approval authority, as stipulated in Article VIII Sections A and B.

1. An apartment, condominium, cluster or town house under this section may be permitted as a Land Development Project in the Residential Multi-Family Incentive District provided that the Planning Board, in accordance with this Ordinance, finds that the establishment of the same meets the standards & requirements of this section.

2. The purpose of these regulations is to encourage the appropriate use of land for the development of multi-family housing in which at least 25% of the units are "Low or moderate income housing", as defined in Article II., taking into consideration the natural amenities of the site. No multi-

family structure or structures or apartment houses or group of apartment houses shall be erected unless in accordance with the standards set forth in this section.

3. In granting any such Land Development Project or in permitting any modification of the regulations set forth herein, the Planning Board may prescribe such conditions and safeguards, as further described in Article X. Special Conditions, as it may deem necessary to prevent nuisance to and promote harmony with nearby property.
4. The disregarding of any such condition or safeguard, when made a part of the terms under which a Land Development Project is granted, shall be deemed a violation of this Ordinance.
5. A Performance Bond or cash surety in the name of the Town of Portsmouth and in the amount of 5% of the estimated cost of development shall be submitted to the Zoning Enforcement Officer prior to the start of construction. Such Performance Bond or cash surety must be maintained in effect until a Certificate of Occupancy is issued.
6. No proposed development shall be approved by the Planning Board unless it is served by an adequate sewerage treatment system, as certified by RIDEM, or public sewer, when the same becomes available, and that the sewer line(s) to which it shall be connected, have adequate capacity to carry the additional effluent created by the development. Should the line(s) be determined to be inadequate, only such portion of the development as can be accepted by the sewer line(s) shall be approved for development, provided it meets all other requirements of this Zoning Ordinance.
 - a) In the event a private sewerage treatment plant is to be constructed, it shall be approved by the State of Rhode Island Department of Environmental Management and it shall meet the standards of any federal or state legislation regarding water pollution control before a building permit may be issued.
7. In granting a Land Development Project for a development under this section the Planning Board shall, immediately upon receipt of an application hereunder, refer the site plan and related documents to the Dept. of Public Works Director, the Chief of the Fire Department, and the Town Planner for review and advice, per the stipulations of Article XI. Development Plan Review. Plans for apartment, Condominium and Town House developments within or adjacent to commercial zones shall also be referred to the Design Review Board review and advice, per the stipulations of Article XI. Development Plan Review. Such persons and boards must render their advice and comments to the Planning Board prior to the public hearing on said application.
8. The Town shall require that the developer provide affidavits or statements prior to final approval signed by the Dept. of Environmental Management and the Coastal Resources Management Council that the proposed site does not violate any portion of the Wetlands Act or CRMC regulations, plus permits from RIDOT for curb cuts and connections to State road drainage systems, if applicable, before issuance of a building permit.
9. Application shall include all required submissions in the checklist entitled "Checklist For Application- Low or Moderate Income Housing". The site plan shall conform to the development standards set forth in paragraph 10 below.

- a) Submittal shall also include items required in Article IX Section D. Design Review Standards, as applicable.
- b) Show the location and size of all units, specifying those to become low or moderate income units.

10.DEVELOPMENT STANDARDS

All developments proposed under this Section shall conform to the following standards:

- a) Minimum Frontage 110'
- b) Minimum Front Yard 30'
- c) Minimum Side Yard 25'
(1)Driveways may not be counted as side yards.
- d) Minimum Rear Yard 25% or 30'
whichever is less
- e) Maximum Lot Coverage by Buildings 25% **
- f) Maximum Building and Parking Area Coverage 40%

** Does include accessory structures such as swimming pools, cabanas, recreational buildings, etc. used exclusively for the residents of the development.

- g) The following are the minimum required buildable land area per unit in square feet. In determining buildable land area, not more than 10% of the area that is subject to periodic or seasonal flooding, per the most recent FEMA maps, shall be counted. (Example: total land area 20 acres of which 5 acres is subject to flooding net buildable land for determining density is 15.5 acres.) The provisions of this subparagraph shall supersede the provisions of Article IV, Section B. Land Space Requirements Table.

(1)If served by an on site sewer system with effluent being discharged into an on site absorption field, the minimum buildable land area per unit in square feet is as follows:

<u>ZONE</u>	<u>1 BEDROOM</u>	<u>2 BEDROOM</u>	<u>3 BEDROOM</u>	<u>EACH ADDITIONAL BEDROOM</u>
R-10	2,500	4,000	5,000	1,500
R-20 & WD	5,000	8,000	10,000	3,000
R-30	7,500	12,000	15,000	4,500
R-40	10,000	16,000	20,000	6,000

(2) If served by sewer system plant or public sewer system with effluent being discharged into an offside absorption field the minimum buildable land area per unit in square feet is as follows:

<u>ZONE</u>	<u>1 BEDROOM</u>	<u>2 BEDROOM</u>	<u>3 BEDROOM</u>	<u>EACH ADDITIONAL BEDROOM</u>
R-10	1,875	2,800	3,750	1,000
R-20 & WD	3,750	5,500	7,500	2,000
R-30	5,625	8,500	11,250	3,000
R-40	7,500	11,250	15,000	4,000

NOTE: Any room such as a den, playroom, etc. is to be considered as a bedroom for this purpose.

- h) On site sewerage systems approval by the Rhode Island Dept. of Environmental Management is not required hereunder (but is, however, required prior to issuance of a building permit).
- i) Sewage System
 - (1)Public sanitary sewers shall be designed so as to ensure a self-cleaning velocity of not less than two and one half (2.5') feet per second nor more than 10' per second. Computation of sewage and sewage flow calculation shall be submitted.
- j) Maximum Building Height: 2 1/2 Stories, not to exceed thirty-five (35) feet.
- k) Drainage
 - (1)The developer shall provide for adequate drainage and shall further provide that the rate of runoff from the property shall not increase during construction or after completion of the development to the detriment of surrounding properties. If the retention of water is deemed necessary, then the retention areas shall be provided prior to construction of any buildings or the surfacing of any areas. The engineer shall submit on separate sheets all computations in determining rates of runoff and shall base all calculations on a ten (10) year storm frequency using the TR-55 method for determining total storm water runoff. These computations shall be prepared by an engineer registered in the State of Rhode Island and he shall affix his seal to the required documents.
- l) Water
 - (1)Computation of water usage and a statement of water availability shall be submitted. Written evidence of permission to connect to a public water supply shall be delivered to the Building Inspector prior to issuance of a building permit.
- m) Parking (see provisions in Article IX).
- n) Open Space
 - (1)Open space shall be provided in appropriate places and every effort shall be made to preserve wooded areas or other site amenities.
- o) Building Design and Location

- (1) Where more than one building is erected on a lot it shall be separated from any other building by a minimum of one hundred (100') feet and all buildings shall be set back a minimum of fifty-five (55') feet from the centerline of any interior way and thirty (30') feet from any parking area.
 - (2) Town House or attached dwelling: No row of attached buildings shall contain less than three (3) nor more than eight (8) units and the minimum width between party walls shall be not less than eighteen (18') feet.
 - (3) No apartment building shall be less than sixty (60') feet in length. No facade or any apartment building shall exceed 160 linear feet without a building jog of at least forty-five (45) degrees for a two wing building or thirty (30) degrees for a three wing building.
 - (4) No one building shall contain more than twenty-four (24) units.
- p) All interior roadways and parking areas shall be constructed in accordance with the "Construction Standard for Streets" of the "Rules and Regulations Regarding the Platting or other Subdivision of Land" of the Town of Portsmouth.
- q) Access and Egress
- (1) For each lot there shall be not more than one entrance and exit driveway for each five hundred (500') feet of the existing street on which the lot faces. Said entrance and exit shall meet the requirements of the State of Rhode Island Department of Roads and Bridges and the Portsmouth Police and Highway Departments.
- r) Acceptable engineering standards shall prevail where no standards are specified.
- s) Fire lanes shall be provided for and approved by the Fire Dept.
- t) All low and moderate income housing units proposed must be integrated throughout the development; be compatible in scale and architectural style to the market rate units within the project; and be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units.
11. The foregoing Development Standards including but not limited to the parking, open space, building design and location and other standards set forth herein and in Article IX may be modified and/or varied by the Planning Board, per the provisions of Article VIII, Section B.
 12. Where these regulations may conflict with other regulations, the more stringent regulation shall prevail.

TOWN OF PORTSMOUTH
CHECKLIST FOR CONCEPT PLAN
LOW OR MODERATE INCOME (LMI) HOUSING DEVELOPMENT

APPLICANT INFORMATION:

OWNER INFORMATION (if different):

Name: _____

Name: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

PROPERTY INFORMATION:

Plat(s) - Lot(s): _____

Acres: _____ Proposed No. Lots: _____

Total Housing Units: _____

Proposed No. LMI Housing Units: _____

DATE OF APPLICATION: _____

_____ Administrative Officer

A concept plan is not mandatory. The purpose of this process is for informal discussion with staff of the feasibility and acceptability of a proposed development, prior to detailed design and engineering. The applicant shall submit to the Administrative Officer at least five (5) photocopies of concept plan maps required below. Plans shall be on 11" by 17" paper at a minimum. Scale of all plans shall be sufficient to clearly show all of the information required.

At a minimum, the following information shall be provided:

A. Concept Plan Drawing(s) - Subdivisions

A map or plan of the parcel(s) proposed for development showing the following information:

1. _____ Name of the proposed development.
2. _____ Name and address of property owner and applicant.
3. _____ Name, address and telephone number of designer, civil engineer or land surveyor, with stamp of registration, preparing master plan.
4. _____ Date of plan preparation, with revision date(s) (if any).
5. _____ Graphic scale and true north arrow.
6. _____ Assessor's Plat and lot number(s) of the land being developed.
7. _____ Zoning district(s) of the land being developed. If more than one district, zoning boundary lines must be shown.
8. _____ Perimeter boundary lines of the development, drawn so as to distinguish them from other property lines.
9. _____ Area of the development parcel in acres and square feet.
10. _____ Proposed number of buildable lots, housing units or other proposed improvements, delineating which are to be LMI units.

11. ____ Location and dimensions of existing property lines within or adjacent to the development parcel, easements and rights-of-way.
12. ____ Location, width and names of existing streets within and immediately adjacent to the development parcel.
13. ____ Location of wetlands, watercourses or coastal features present within the parcel or within 200 feet of the property being subdivided.
14. ____ Preliminary locations of facilities for collecting and discharging stormwater.
15. ____ Location and approximate size of existing buildings or significant structures on or immediately adjacent to the subdivision which may have any effect of the development of the land.
16. ____ Approximate locations for connection with existing water supply.
17. ____ Location of historic cemeteries on or immediately adjacent to the subdivision (if any).
18. ____ Location of any unique natural and/or historic features, including stone walls.
19. ____ Notation on plan if the development parcel(s) are located within any of the following areas:
 - a) ____ Watershed Protection Overlay District
 - b) ____ Multifamily Incentive Zone
20. ____ If a subdivision of land is proposed for housing on individual lots, show the location and dimensions of proposed improvements including streets, lots, lot lines, with approximate lot areas and dimensions, utilities, easements, drainage facilities, and other development. Proposed lot lines shall be drawn so as to distinguish them from existing property lines.
21. ____ Proposed phasing plan (if any).
22. ____ Overall plan of development for any remaining part of the land being subdivided.
23. ____ Base flood elevation data (if applicable).
24. ____ Open space use plan.
25. ____ Parcels of land proposed for dedication to the Town of Portsmouth, the State of Rhode Island, or other quasi-public, non-profit organization or homeowners' association (if any).

B. Concept Plan Drawing(s) - Multi-Family Developments

In addition to the items above, for developments involving multiple buildings, such as multifamily dwellings, apartments or condominiums, the following information shall be provided.

1. ____ Site development plan(s) to show the following:
 - i) Contain a title block in the lower right corner including the name of the surveyor, designer and engineer, the name of the development, owner and applicant if other than owner, the date and scale, the acreage and the number of efficiency or one bedroom units, the number of two bedroom units and the number of units containing three or more bedrooms.

- ii) Show location and width of all proposed vehicular and pedestrian interior ways.
- iii) Show location and number of spaces of proposed parking.
- iv) Show location of all proposed buildings by type (i.e. Apartment, townhouse, recreation, etc.) with the number of units by bedroom distribution. Show the locations and sizes of housing units in each building, delineating which are to be LMI units.
- v) Location and dimensions of proposed wastewater treatment facilities.
- vi) Show location of all proposed utilities.
- vi) Show location and type of retention/erosion control areas if necessary to meet drainage requirement.
- vii) Show the proposed treatment of all open spaces

2. ____ Preliminary scaled architectural drawings for each building shall include the following:

- (i) A tabulation of proposed buildings by type and size to indicate number of units in each building, number of bedrooms and floor area in each unit, total floor area in each building.
- (ii) Proposed ground coverage and a tabular summary of the area of the tract to be occupied by buildings, by parking and by total impervious area.
- (iii) Typical building elevations.
- (iv) Identification of all housing units proposed to be restricted to occupancy for low and moderate income persons.

C. Supporting Materials - Comprehensive Permits

In accordance with Article XIX of the Zoning Ordinance, the following information shall also be submitted to the Administrative Officer for all applications for a comprehensive permit:

1. ____ A letter of eligibility issued by the Rhode Island Housing Mortgage Finance Corporation indicating the maximum allowable purchase or rental price for each low and moderate income unit, and that the initial pro forma was reviewed and that the project appears feasible. In the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in such form as may be prescribed by the Town of Portsmouth for a municipal government subsidy; and

2. ____ A written request to the Planning Board to submit a single application to build or rehabilitate low or moderate income housing in lieu of separate applications to the applicable local boards.

3. Identification (if applicable) of the specific sections and provisions of local ordinances and regulations from which the applicant is seeking relief and the extent of such relief; and

4. ____ A financial pro-forma for the proposed development, as presented for preliminary review to the Rhode Island Housing Mortgage Finance Corporation.

D. Supporting Materials

The applicant shall submit to the Administrative Officer up to ten (10) copies of a narrative report (actual number of copies to be determined by the Administrative

Officer) providing a general description of the existing physical environment and existing use(s) of the property along with a general description of the uses and type of development proposed by the applicant. The narrative report shall include reduced copies of all plans required in Nos. A - C above, if applicable, plus items 2-7, below:

1. _____ Filing Fee: - \$_____ (fees waived for LMI units)
2. _____ A copy of the soils map of the subdivision parcel and surrounding area, and a general analysis of soil types and suitability for the development proposed. If any prime agricultural soils are within the subdivision parcel(s) the soils map shall be marked to show the location of said prime agricultural soils.
3. _____ Provisions for the treatment and disposal of wastewater (ISDS, public sewer, advanced treatment systems, other), with a description of system design, operation and maintenance.
4. _____ An estimate of the approximate population of the proposed subdivision.
5. _____ An estimate of the number of school-aged children to be housed in the proposed subdivision.
6. _____ Proposed phasing, if any.
7. _____ Site Analysis (see Article XIII, Section G.)
8. _____ A vicinity map, drawn to a scale of 1"=400' or as necessary to show the area within one-half mile of the subdivision parcel showing the locations of all streets, existing lot lines, and zoning district boundaries. Schools, parks, fire stations and other significant public facilities shall be indicated on the locus map by shading and labeling the specific use.
9. _____ The location, details and plans of any previous application to or approval by RIDEM for lowering the water table, or installation of such facilities.
10. _____ Financial pro forma for the proposed development.
11. _____ Initial written comments on the Master Plan from the following agencies:
(Provided by the Administrative Officer)

Local Agencies:

_____ Town Planner	Date: _____
_____ Town Administrator	Date: _____
_____ Public Works	Date: _____
_____ Building Inspector	Date: _____
_____ Fire Dept.	Date: _____
_____ Police Dept.	Date: _____
_____ Public Water Authority	Date: _____
_____ School Dept.	Date: _____
Other (specify) _____	Date: _____

Adjacent communities (specify):

_____	Date: _____
_____	Date: _____

State agencies:

_____ Environmental Management	Date: _____
_____ Transportation	Date: _____
_____ Coastal Resources	Date: _____
_____ Other (specify) _____	Date: _____

Federal agencies:

_____ U.S. Army Corps Engineers

Date: _____

_____ FEMA

Date: _____

CERTIFICATION OF COMPLETENESS:

Plat(s) - Lot(s)

I hereby certify that the information required for an application for a master plan for a major subdivision is complete and meets the requirements of Portsmouth's Subdivision Regulations, and that the applicant may proceed with the approval process.

Administrative Officer

Date

**TOWN OF PORTSMOUTH
CHECKLIST FOR MASTER PLAN
LOW OR MODERATE INCOME (LMI) HOUSING DEVELOPMENT**

APPLICANT INFORMATION:

OWNER INFORMATION (if different):

Name: _____

Name: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

PROPERTY INFORMATION:

Plat(s) - Lot(s): _____

Acres: _____ Proposed No. Lots: _____

Total Housing Units: _____

Proposed No. LMI Housing Units: _____

DATE OF APPLICATION: _____

_____ Administrative Officer

The applicant shall submit to the Administrative Officer at least five (5) photocopies of master plan maps required below. The scale of all plans shall be sufficient to clearly show all of the information required and shall be subject to the approval of the Administrative Officer.

At a minimum, the following information shall be provided:

A. Master Plan Drawing(s)

A map or plan of the parcel(s) proposed for development showing the following information:

- 1.____ Name of the proposed development.
- 2.____ Name and address of property owner and applicant.
- 3.____ Name, address and telephone number of designer, civil engineer or land surveyor, with stamp of registration, preparing master plan.
- 4.____ Date of plan preparation, with revision date(s) (if any).
- 5.____ Graphic scale and true north arrow.
- 6.____ Assessor's Plat and lot number(s) of the land being developed.
- 7.____ Zoning district(s) of the land being developed. If more than one district, zoning boundary lines must be shown.
- 8.____ Perimeter boundary lines of the development, drawn so as to distinguish them from other property lines.
- 9.____ Area of the development parcel in acres and square feet
- 10.____ Proposed number of buildable lots, housing units or other proposed improvements, delineating which are to be LMI units.
- 11.____ Location and dimensions of existing property lines within or adjacent to the development parcel, easements and rights-of-way.

- 12.____ Location, width and names of existing streets within and immediately adjacent to the development parcel.
- 13.____ Location of wetlands, watercourses or coastal features present within the parcel or within 200 feet of the property being subdivided.
- 14.____ Location of other significant natural features such as wooded areas, rock outcrops, beaches, etc.
- 15.____ Areas of agricultural use.
- 16.____ Existing topography showing natural drainage patterns, and existing stormwater drainage facilities.
- 17.____ Preliminary locations of facilities for collecting and discharging stormwater.
- 18.____ Location and approximate size of existing buildings or significant structures on or immediately adjacent to the subdivision which may have any effect of the development of the land.
- 19.____ Proposals for connection to water supply. Confirmation of availability of public water supply, if applicable.
- 20.____ Location of historic cemeteries on or immediately adjacent to the subdivision (if any).
- 21.____ Location of any unique natural and/or historic features, including stone walls.
- 22.____ Notation on plan if the development parcel(s) are located within any of the following areas:
 - a) ____ Watershed Protection Overlay District
 - b) ____ Residential Multi-Family Incentive District
- 23.____ If a subdivision of land is proposed for housing on individual lots, show the location and dimensions of proposed improvements including streets, lots, lot lines, with approximate lot areas and dimensions, utilities, easements, drainage facilities, and other development. Proposed lot lines shall be drawn so as to distinguish them from existing property lines. *For multifamily or condominium developments having multiple buildings on a single lot, or a combination of lots, see Section B.*
- 24.____ Proposed phasing plan (if any).
- 25.____ Overall plan of development for any remaining part of the land being subdivided.
26. ____ Base flood elevation data (if applicable).
27. ____ Open space use plan.
28. ____ Parcels of land proposed for dedication to the Town of Portsmouth, the State of Rhode Island, or other quasi-public, non-profit organization or homeowners' association (if any).

B. Multi-Family Developments

For developments involving multiple buildings on a single lot, such as multifamily dwellings, apartments or condominiums, the following information shall be provided.

1. ____ A location map showing the location of the proposed site in relation to the Town of Portsmouth.

2. ____ A plot plan showing the entire area to be developed as well as any abutting land under control of the applicant or owner of the land shown on the plan.
3. ____ Site development plan(s) to show the following:
 - a) Contain a title block in the lower right corner including the name of the surveyor, designer and engineer, the name of the development, owner and applicant if other than owner, the date and scale, the acreage and the number of efficiency or one bedroom units, the number of two bedroom units and the number of units containing three or more bedrooms.
 - b) Show location and width of all proposed vehicular and pedestrian interior ways.
 - c) Show location and number of spaces of proposed parking.
 - d) Show location of all proposed buildings by type (i.e. Apartment, townhouse, recreation, etc.) with the number of units by bedroom distribution. Show the locations and sizes of housing units in each building, delineating which are to be LMI units.
 - e) Show location and type of retention/erosion control areas if necessary to meet drainage requirement.
 - f) Show the proposed location and treatment of all open spaces
 - g) Show density calculations, lot coverage (buildings and paved surfaces), and setbacks of all buildings and paved areas.
4. ____ Preliminary scaled architectural drawings for each building shall include the following:
 - (a) A tabulation of proposed buildings by type and size to indicate number of units in each building, number of bedrooms and floor area in each unit, total floor area in each building.
 - (b) Proposed ground coverage and a tabular summary of the area of the tract to be occupied by buildings, by parking and by total impervious area.
 - (c) Typical building elevations.
 - (d) Identification of all housing units proposed to be restricted to occupancy for low and moderate income persons.

C. Supporting Materials - Comprehensive Permits

In accordance with Article XIX of the Zoning Ordinance, the following information shall also be submitted to the Administrative Officer for all applications for a comprehensive permit:

1. ____ A letter of eligibility issued by the Rhode Island Housing Mortgage Finance Corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in such form as may be prescribed by the Town of Portsmouth for a municipal government subsidy; and
2. ____ A written request to the Planning Board to submit a single application to build or rehabilitate low or moderate income housing in lieu of separate applications to the applicable local boards. The written request shall

_____ Public Works Date: _____
 _____ Building Inspector Date: _____
 _____ Fire Dept. Date: _____
 _____ Police Dept. Date: _____
 _____ Public Water Authority Date: _____
 _____ School Dept. Date: _____
 Other (specify) _____ Date: _____

Adjacent communities (specify):

_____ Date: _____
 _____ Date: _____

Federal agencies:

_____ U.S. Army Corps Engineers Date: _____
 _____ FEMA Date: _____

CERTIFICATION OF COMPLETENESS:

Plat(s) - Lot(s)

I hereby certify that the information required for an application for a master plan for a major subdivision is complete and meets the requirements of Portsmouth's Subdivision Regulations, and that the applicant may proceed with the approval process.

Administrative Officer

Date

AMENDED TO REFLECT PROPOSED CHANGES IN ZONING ORDINANCE
TOWN OF PORTSMOUTH
CHECKLIST FOR PRELIMINARY PLAN APPLICATION
LOW OR MODERATE INCOME HOUSING - COMPREHENSIVE PERMITS

APPLICANT INFORMATION:

Name: _____

Address: _____

Phone: _____

Fax: _____

OWNER INFORMATION (if different):

Name: _____

Address: _____

Phone: _____

Fax: _____

PROPERTY INFORMATION:

Plat(s) - Lot(s): _____

Acres: _____ Proposed No. Lots: _____ Proposed No. Units: _____

DATE OF APPLICATION: _____

_____ Administrative Officer

(NOTE: This is the checklist for Comprehensive Permits for LMI developments only. Applicant must specifically request such consideration; otherwise it is heard as a regular development, with no fast-tracking. Any such application must propose to be at least 25% low-moderate income.)

A. COMPREHENSIVE PERMIT APPLICATION

Per the provisions of R.I. General Laws 45-53-4, Applications for a comprehensive permit shall include:

1. _____ A letter of eligibility issued by the Rhode Island Housing Mortgage Finance Corporation indicating the maximum allowable purchase or rental price for each low and moderate income unit, and that the initial pro forma was reviewed and that the project appears feasible. In the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy or application in such form as may be prescribed by the Town of Portsmouth for a municipal government subsidy.
2. _____ A written request to the local Planning Board to submit a single application to build or rehabilitate low or moderate income housing in lieu of separate applications to the applicable local boards. The written request shall identify the specific sections and provisions of applicable local ordinances and regulations from which the applicant is seeking relief;
3. _____ A proposed timetable for the commencement of construction and completion of the project;

4. _____ A sample land lease or deed restriction with affordability liens that will restrict use as low and moderate income housing in conformance with the guidelines of the agency providing the subsidy for the low and moderate income housing, but for a period of not less than thirty (30) years;
5. _____ Identification of an approved entity that will monitor the long-term affordability of the low and moderate income units;
6. _____ A financial pro-forma for the proposed development;
7. For comprehensive permit applications:
 - (a) not involving major land developments or major subdivisions including, but not limited to, applications seeking relief from specific provisions of a local zoning ordinance, or involving administrative subdivisions, minor land developments or minor subdivisions, or other local ordinances and regulations: those items required by local regulations promulgated pursuant to applicable state law, with the exception of evidence of state or federal permits; and for comprehensive permit applications;
 - (b) involving major land developments and major subdivisions, unless otherwise agreed to by the applicant and the town; those items included in the checklist for the master plan in the local regulations promulgated pursuant to § 45-23-40.
8. Notwithstanding the submission requirements set forth above, the local Planning Board may request additional, reasonable documentation throughout the public hearing, including, but not limited to, opinions of experts, credible evidence of application for necessary federal and/or state permits, statements and advice from other local boards and officials, including:

B. PRELIMINARY PLAT MAP(S) - DRAFTING STANDARDS

The applicant shall submit to the Administrative Officer at least nine (9) copies of the preliminary site plans. Each sheet shall be no larger than 22 inches by 32 inches, and a sufficient number of sheets shall be included to clearly show all of the information required. In the event two or more sheets are necessary, match lines shall be provided and each sheet shall be numbered. Sheets shall be numbered sequentially (e.g., sheet 1 of 3, 2 of 3, etc.). Each plan shall be stamped and dated by a R.I. registered professional civil engineer and/or land surveyor in the State of Rhode Island, as applicable.

Scale: Preliminary Plats shall be drawn to a horizontal scale of 40 feet to the inch and the vertical scale of profiles shall be four (4) feet to the inch, unless the Board at the time of the meeting on the subdivision shall order or permit a different scale. The vertical scale of profiles shall not be less than four (4) feet to the inch. Where the magnitude of the

development is such that such scales are impracticable, applicant should request approval of the Administrative Officer to vary the scale.

Dimensions, Areas and Angles: All dimensions will be shown in English and Metric values, and a conversion scale is to be provided on the plat for ready reference. Plat shall show the length, measured in feet and decimals of a foot, of all straight lines, arcs and the radii thereof; the area in square feet of all lots the sizes, measured in degrees, of all angles formed by the intersection of all streets and lot lines; and the size measured in degrees, of the central angle of all arcs.

C. BASIC INFORMATION

1. _____ Name of the proposed development, including phase number, if applicable (major development only).
2. _____ Name and address of property owner and applicant.
3. _____ Written Authorization of Owner to Applicant, if applicable.
4. _____ Name, address and telephone number of civil engineer and/or land surveyor.
5. _____ Date of plan preparation, with revision date(s) (if any).
6. _____ Graphic scale and true north arrow.
7. _____ Assessor's Plat and lot number(s) of the land being subdivided.
8. _____ Zoning district(s) of the land being subdivided. If more than one district, zoning boundary lines must be shown.
9. _____ Perimeter boundary lines of the development, drawn so as to distinguish them from other property lines.
10. _____ Area of the development parcel(s) and proposed number of buildable lots.

D. EXISTING CONDITIONS MAP(S)

1. _____ Location and dimensions of existing property lines within or forming the perimeter of the development parcel(s).
2. _____ Easements and rights-of-way within or adjacent to the development parcel(s).
3. _____ Location, width and names of existing streets within and immediately adjacent to the development parcel.
4. _____ Names of abutting property owners and property owners immediately across any adjacent streets.
5. _____ Location of wooded areas and notation of existing ground cover.
6. _____ Location of pond, stream, brook or other wetlands, watercourses or coastal features within the parcel or within 200 feet of the perimeter of the development parcel, plus applicable setback lines. DEM or CRMC verification as appropriate.
7. _____ Location of any well, septic system, easements, or structures within the parcel or within 200 feet of any property line.
8. _____ A letter prepared by an engineer registered in the State of Rhode Island or a person holding a current Rhode Island Class III Designer's License shall be submitted that attests to the adequacy of the soils and location of the proposed on-site sewerage system.

9. ____ The boundaries of different soil types within the watershed, including delineation of the site, should be shown. (Copies of soil survey sheets with boundaries and roadways drawn on them are sufficient). If any prime agricultural soils are within the development parcel(s) the soils map shall be marked to show location of said prime agricultural soils.
10. ____ Existing contours at intervals of five feet for minor subdivisions and two feet for major subdivisions, using MGVD 83 MSL datum, plus contours at all property lines and all property within 200 feet of any property line (the latter may be taken from the most recent public records).
11. ____ Base flood elevation data (if applicable).
12. ____ Location and approximate size of existing buildings or significant structures on or immediately adjacent to the development that may have any effect of the development of the land.
13. ____ Location and dimension of all existing utilities within and immediately adjacent to the development, including sewer, water, gas, electric, phone, cable TV, fire alarm, hydrants, utility poles, stormwater drainage facilities or other above or underground utilities.
14. ____ Areas of agricultural use (if any).
15. ____ Location of historic cemeteries on or immediately adjacent to the development parcel(s) (if any).
16. ____ Location of any unique natural and/or historic features, including stone walls.
17. ____ Notation on plan if the development parcel(s) are located within any of the following areas:
 - a) ____ Natural Heritage Areas (RIDEM)
 - b) ____ Watershed Protection Overlay District

E. PROPOSED CONDITIONS MAP(S)

1. ____ Proposed streets, lots, lot lines, with approximate lot areas and dimensions. Proposed lot lines shall be drawn so as to distinguish them from existing property lines.
 - a) ____ Twenty (20) copies for a major subdivision/land development project or ten (10) for a minor subdivision/land development project of the proposed development plan reduced to no larger than 11" x 17", to be distributed at public hearing.
2. ____ Grading plan to show proposed contours at intervals of five feet for minor subdivisions and two feet for major subdivisions, using MGVD 83 MSL datum for all grading proposed for on and off-site street construction, drainage facilities and grading upon individual lots if part of proposed development improvements (if applicable).
3. ____ Drainage plan per separate checklist.
4. ____ Landscaping plan to show all significant proposed clearing of land, limits of clearing, removal of existing vegetation, revegetation and/or landscaping on street rights-of-way and upon individual lots if part of proposed development improvements.
5. ____ Soil and sediment erosion control plan, to be reviewed under the Town of Portsmouth's Soil and Sediment Erosion Control Ordinance.

6. _____ Proposed street plan and separate profile plan drawn at a scale of 1"= 40' horizontal and 1" = 4' vertical. *(This requirement is only applicable to developments which involve the creation or extension of streets).*
7. _____ Proposed street cross-sections. *(This requirement is only applicable to developments which involve the creation or extension of streets).*
8. _____ Proposed street names.
9. _____ Proposed sidewalks and/or bike paths.
10. _____ Proposed street trees.
11. _____ Proposed drainage plan and drainage calculations prepared by a R.I. Registered Professional Civil Engineer.
12. _____ Detailed drawings of any proposed stormwater detention, retention or sediment pond facilities.
13. _____ Location of all tests (percolation test holes, soil analysis, or ground water table determination) for installation of ISDS or stormwater detention/retention or sediment ponds (if as applicable):
14. _____ A separate utility plan showing location and dimension of all proposed utilities, including location of all sewer, water, gas, electric, phone, cable TV, fire alarm, hydrants, utility poles, or other proposed above or underground utilities, stormwater drainage facilities, as applicable, including connections to existing facilities. (Plan need not be separate for minor developments.)
15. _____ Notation of proposed deed restrictions required by the Planning Board, utility companies, or other appropriate agency/entity.
16. _____ Location, dimension and area of any land proposed to be set aside as open space (major developments only).
17. _____ Certification by a R.I. Registered Land Surveyor that a perimeter survey of the land being subdivided has been performed and conforms to the survey requirements of these Regulations.
18. _____ A listing of any permits and/or agreements with state and/or federal reviewing agencies (if any) that will be required.
19. _____ Parcels of land proposed for dedication to the Town of Portsmouth, the State of Rhode Island, or other quasi-public, non-profit organization or homeowners' association.

F. MULTI-FAMILY DEVELOPMENTS

For developments involving multiple buildings on a single lot, such as multifamily dwellings, apartments or condominiums, the following information shall be provided. If changed from the master plan submission, indicate the changes made as part of preliminary submission.

1. _____ A location map showing the location of the proposed site in relation to the Town of Portsmouth.
2. _____ A plot plan showing the entire area to be developed as well as any abutting land under control of the applicant or owner of the land shown on the plan.
3. _____ Site development plan(s) to show the following:
 - i) Be drawn at a scale of 1" = 40' and be 32" long and 22" wide and contain a north arrow in the upper left corner (A master plan may be

- of other scale).
- ii) Contain a title block in the lower right corner including the name of the surveyor, designer and engineer, the name of the development, owner and applicant if other than owner, the date and scale, the acreage and the number of efficiency or one bedroom units, the number of two bedroom units and the number of units containing three or more bedrooms.
 - iii) Show both existing and proposed contours at two (2) foot intervals, by the use of solid and dotted lines.
 - iv) Show size and location of all underground utilities within and abutting the site.
 - v) Show location and width of all proposed vehicular and pedestrian interior ways.
 - vi) Show location and number of spaces of proposed parking.
 - vii) Show location of all proposed buildings by type (i.e. Apartment, townhouse, recreation, etc.) with the number of units by bedroom distribution.
 - viii) Show location and size of all proposed utilities, as approved by the installing authority.
 - ix) Show location and type of retention/erosion control areas if necessary to meet drainage requirement.
 - x) Show location of all monuments.
 - xi) Show the names of all abutters as determined from the most recent tax list.
 - xii) Show the proposed treatment of all open spaces
 - xiii) Show on a separate sheet building elevations.
 - xiv) Show on a separate sheet preliminary layout of building interiors.
- b) Submittal shall also include items required in Article IX Section D. of the Portsmouth Zoning Ordinance, entitled Design Review Standards, as applicable.

4. _____ Preliminary scaled architectural drawings for each building signed and certified in accordance with the Rhode Island State Building Code, or by an architect licensed in the State of Rhode Island. Architectural plans shall include the following:

- (i) Floor plans of each floor
- (ii) Floor plans of typical housing units, labeled by type
- (iii) A tabulation of proposed buildings by type and size to indicate number of units in each building, number of bedrooms and floor area in each unit, total floor area in each building)
- (iv) Proposed ground coverage and a tabular summary of the area of the tract to be occupied by buildings, by parking and by total impervious area.
- (v) Typical building elevations and sections
- (vi) Indication of construction type and exterior finish materials and color(s)
- (vii) Identification of all housing units proposed to be restricted to occupancy for low and moderate income persons

G. SUPPORTING MATERIALS

- 1. _____ Filing Fee: \$_____ (fees waived for LMI units).
- 2. _____ A vicinity map, drawn to a scale of 1"=400' or as necessary to show the area within one-half mile of the development parcel showing the locations of all streets, existing lot lines, and zoning district boundaries. Schools, parks, fire stations and other significant public facilities shall be indicated on the locus map by shading and labeling the specific use.

CERTIFICATION OF COMPLETENESS:

Plat(s) - Lot(s)

I hereby certify that the information required for an application for a major subdivision or minor subdivision involving the creation or extension of streets is complete and meets the requirements of Portsmouth's Subdivision Regulations, and that the applicant may proceed with the approval process.

Administrative Officer

Date