

**Notice of Public Hearing
Proposed Amendment to Town of New Shoreham Zoning Ordinance
BUILDING OFFICIAL AND ZONING OFFICIAL DUTIES**

**Tuesday, May 3, 2022
In-Person Meeting at Town Hall, Old Town Road, Block Island RI
7:00 PM**

Watch on Youtube: <https://www.youtube.com/channel/UCmvoSBIQ0bsFRg1kxPgNVCA>

The Town of New Shoreham Town Council is considering potential Zoning Ordinance amendments related to the duties of the Building Official and Zoning Official to ensure continued proper enforcement and administration of the Zoning Ordinance. The ordinance currently specifies the Building Official shall serve as the Zoning Enforcement Official. The Town no longer has a combined Building Official / Zoning Official and certain duties assigned within the Zoning Ordinance are proposed to be amended to Zoning Official rather than Building Official as appropriate. Additional minor amendments for gender neutral phrasing have also been included and proposed within these amendments. Deletions appear crossed out and additions are underlined.

The proposed language 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.

Appendix E - ZONING ORDINANCE

ARTICLE 1. - GENERAL

Section 110. - General Regulations.

- A. No building or land shall be used, and no buildings shall be erected or structurally altered, except in conformance with the regulations herein described.
- B. The use of any structure or land shall comply with the performance standards of this Zoning Ordinance. The **Building Official and Zoning Official**, when reviewing an application for any permit required by law, shall determine that a use complies with all applicable performance standards.
- C. When a lot is divided by a zoning district boundary, the regulations for either zoning district shall apply, except that the regulations of one zoning district shall not be extended more than thirty (30) feet into the adjoining district.
- D. Development Plan Review is required for all uses requiring a Special Use Permit. Refer to Section 501, Development Plan Review Standards, and Section 704, Development Plan Review.

Section 112. Special Temporary Permits.

- A. The Town Council may, in circumstances of emergency or other urgent necessity for the public health and safety, grant temporary permits to individuals, groups or corporations to use property for uses otherwise prohibited, or permissible only by Special Use Permit, provided that:
 - 1. A permit may be granted only for the use or purpose that cannot be accomplished by compliance with the provisions of the ordinance.
 - 2. The permit shall be granted for the least period of time feasible, and in no event shall such period extend beyond six (6) months provided, however, that upon similar application one additional period of six (6) months may be allowed in accordance with these provisions.
- B. The use of temporary structures or facilities associated with building construction or rehabilitation shall only be permitted as follows: (Amended January 20, 2010)
 - 1. A temporary building or yard for construction materials and/or equipment or a temporary trailer used for residential occupancy necessitated by any loss or damage of a principal structure by fire, hurricane or other natural disaster shall be permitted in any district subject the approval by the **Building Official or Zoning Official** provided that any building permit for any such temporary use shall be valid for not more than six (6) months unless such time period is extended by the **Building Official or Zoning Official**, for one additional six (6) month period, for good cause.
 - 2. A temporary facility for the storage of an owner or occupant's household or interior belongings shall be permitted in any district for the duration of the construction period, regardless of the circumstances, provided that such facility is removed prior to the issuance of the Certificate of Occupancy. (Amended January 20, 2010)

(Amended November 7, 1994)

Section 113. - Non-Conformance.

A. *Continuance of Non-Conformance.* Any structure or the use of any structure or land which structure or use was lawful at the date of enactment of this Zoning Ordinance and which is non-conforming under the provisions of this Zoning Ordinance, or which shall be made non-conforming by a subsequent amendment, may be continued subject to the following provisions.

B. *Non-Conforming by Use.* Something is non-conforming by use if it is 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 this Ordinance shall be non-conforming by use.

1. *Repairs and Alterations.* A building devoted to a non-conforming use may be repaired, maintained or improved, provided the number of square feet of floor area devoted to the non-conforming use is not increased.

2. *Change in Use.* A non-conforming use may be changed only to a use which conforms to the Zoning Ordinance. Once changed to a conforming use, no structure or use shall revert to a non-conforming use.

3. *Abandonment.* If a non-conforming use is abandoned, it may not be reestablished. Abandonment shall consist of some overt act, or failure to act, which would lead one to believe that the owner of the property neither claims nor retains any interest in its continuation, unless the owner can demonstrate intent not to abandon the use. An involuntary interruption of non-conforming use, such as by fire and natural catastrophe, will not establish the intent to abandon. If any non-conforming use is halted for a period of one (1) year, for what ever reason, either voluntary or involuntary, the owner of the property will be presumed to have abandoned the non-conforming use, unless that presumption is rebutted by the presentation of sufficient evidence of the intent not to abandon the use. Any subsequent use shall conform to the regulations of this Zoning Ordinance.

4. *Relocation.* A non-conforming use shall not be moved in whole or in part to any portion of the land other than that occupied by such use at the time of adoption of the Ordinance unless granted a Special Use Permit under the provisions of Article 7 of this Ordinance.

C. *Non-Conforming Buildings.*

1. *Expansion.* A structure which is non-conforming with respect to the dimensional requirements of the Zoning Ordinance may not be expanded, enlarged or increased unless such expanded or enlarged portion complies with the dimensional requirements of the Zoning Ordinance.

2. *Destruction or Demolition.* A non-conforming structure which is destroyed or damaged by any means beyond the control of the owner shall be rebuilt or restored within a period of eighteen (18) months, or thereafter conform with the dimensional requirements of the Zoning Ordinance. If a non-conforming building or structure is

demolished or removed by or for its owner, it shall not be rebuilt or replaced except in conformity with the dimensional requirements of the Zoning Ordinance.

3. *Use of Non-Conforming Building.* Notwithstanding any dimensional requirements of the Zoning Ordinance, a non-conforming building or structure may be used for any use allowed in the zoning district where it is located unless the zoning district regulations contain specific dimensional requirements peculiar to the use which cannot be met by the existing structure or on the existing lot.

D. *Construction Begun Prior to Ordinance.*

1. Nothing herein contained shall require any change in plans, construction or structure the construction of which has been diligently prosecuted previous to the date of enactment of the Zoning Ordinance provided complete plans for such a building or structure shall have been filed with and accepted by the Building Official, and a Building Permit has been issued which remains valid.

E. *Substandard Lots of Record.*

1. A substandard lot of record may be considered a buildable lot, regardless of the lot frontage or lot area, provided such lot or parcel of land was shown on a plat, or on a deed, duly recorded prior to the effective date of this Ordinance, and further provided that at the time of such recording the lot or parcel of land so created conformed in all respects to the minimum requirements of the Zoning Ordinance in effect at that time.

2. Nothing in this Section shall be construed as exempting any substandard lot of record from complying with the maximum lot building coverage, maximum lot coverage, maximum height or minimum setback requirements for the Zoning District in which such lot is located, except, however, an exemption from the maximum lot building coverage, and reductions in minimum setbacks shall be allowed for development on lots in the RA and RB Zones as follows (Amended October 21, 2009):

a. *Maximum Lot Building Coverage Exemption.* An exemption to the application of maximum lot building coverage shall be allowed when the total building footprint does not exceed six hundred (600) square feet and there is no existing or proposed additional lot coverage. Any development proposed on a substandard lot which exceeds 600 square feet in either lot building coverage or total lot coverage and which also exceeds the maximum coverages allowed as a percentage of lot area for lots in the RA Zone and RB Zone (see Sections 306C and 307C, respectively), shall require the granting of a dimensional variance from the Zoning Board of Review. (Section Added October 21, 2009)

b. *Reduced Side Yard Setbacks.* Minimum side yard setbacks may be reduced for substandard lots of record lots in the RA and RB Zones which have less than the minimum required lot frontage. For lots in the RA Zone which have a lot frontage less than 200 feet in length, and for lots in the RB Zone which have a lot frontage less than 150 feet in length, the required side yards, 50 feet and 25 feet, respectively, may be reduced in the same proportion that the lot does not meet its required minimum lot frontage. By way of example, a lot in the RA Zone which has a lot frontage of only 140 feet (70% of the required 200 feet) may have reduced minimum side yards of 35 feet each (70% of the required 50 foot side yard setback). Similarly, a lot in the RB Zone which has a lot frontage of only 105 feet (70% of the required 150 feet) may have reduced minimum side yards of 18 feet each (70% of the required 25 foot side yard setback). (Section Added October 21, 2009)

c. *Minimum Side Yard Setbacks.* All necessary calculations to determine the allowable reductions in minimum side yards shall be made by the Building Zoning Official, who shall round figures to the nearest whole number. Notwithstanding the above paragraph, the Building Zoning Official shall not approve a development involving a side yard of less than twenty (20) feet in the RA Zone or less than fifteen (15) feet in the RB Zone without the granting of a dimensional variance by the Zoning Board of Review. (Section Added October 21, 2009)

d. *Reduced Front and Rear Yard Setbacks.* Minimum front and rear yard setbacks may be reduced for substandard lots of record in the RA and RB Zones which have a lot depth of less than 200 feet. For such lots in either zoning district, the required front and rear yards, 50 feet, may be reduced in the same proportion that the lot does not measure 200 feet of lot depth. By way of example, a lot in either zoning district which has a lot depth of only 160 feet (80% of 200 feet) may have both a reduced minimum front and rear yard of 40 feet (80% of the required 50 foot front and rear yard setback). Similarly, a lot in either zoning district which has a lot depth of only 80 feet (40% of 200 feet) may have both a reduced minimum front and rear yard of 20 feet (40% of the required 50 foot setback). (Section Added October 21, 2009)

e. *Minimum Front and Rear Yard Setbacks.* All necessary calculations to determine the allowable reductions in front and rear yards shall be made by the Building Zoning Official, who shall round figures to the nearest whole number. Notwithstanding the above paragraph, the Building Zoning Official shall not approve a development involving a front or rear yard of less than twenty (20) feet without the granting of a dimensional variance by the Zoning Board of Review. (Section Added October 21, 2009)

f. *Discretion by the Building Zoning Official.* In undertaking the calculations to allow reduced front, rear and side yard setbacks, the Building Zoning Official may elect to not apply such reductions due to the unique characteristics or configuration of a given lot, which may include such factors as: (Section Added October 21, 2009)

- (1) The presence of wetlands and/or slopes in excess of twenty-five percent (25%) on the lot; (Section Added October 21, 2009)
- (2) Lot boundaries with irregular dimensions, which may cause unusual results; (Section Added October 21, 2009)
- (3) The location of existing buildings on adjoining lots, which may cause real or perceived conflicts if reduced; (Section Added October 21, 2009)
- (4) Insufficient area to provide the necessary off-street parking; and/or (Section Added October 21, 2009)
- ~~(5) Any other factor that makes application of the reduced setbacks, in the opinion of the Building Official, problematic from an environmental or physical aspect. (Section Added October 21, 2009)~~

3. If, as of the effective date of this ordinance, or subsequent thereto, one or more substandard lots of record are held in common ownership with any contiguous lot, such lots shall be combined for the purposes of this ordinance in order to conform, or more nearly conform, to the minimum lot area and minimum lot frontage of this ordinance for the Zoning District in which the lots are located. If all such contiguous lots, so combined, are not sufficient to permit the enlargement of said lot to conforming area and dimensions, then the largest lot which the contiguous common ownership will permit shall be established. By way of example, if all such contiguous lots, so combined, are sufficient to meet the applicable area and dimensional requirements for at least one lot, but not for two or more fully conforming lots, then all the lots shall be combined to create a single lot only. Such lots may not be sold separately.

a. Contiguous substandard lots of record shall not be combined if each substandard lot already supports a principal use. By way of example, if two contiguous substandard lots, in common ownership, already each support a single family dwelling they would not be combined.

b. Any contiguous substandard lot of record which was designated and identified by the Tax Assessors as a separate and distinct taxable lot, and was assessed as a separate and distinct lot on December 31, 2007 shall not be combined. Any lots not so designated, identified and assessed shall be subject to this ordinance.

(Section E, "Substandard Lots of Record," was renamed and amended on March 19, 2008, additionally amended on October 21, 2009)

**Section 201. -
Word Usage.**

ARTICLE 2. - DEFINITIONS

- A. Words used in the present tense include the future tense. The singular includes the plural and the plural includes the singular. The masculine gender includes the feminine, and the feminine gender includes the masculine.
- B. The word "shall" is mandatory; the word "may" is permissive. The word "use," as a verb, shall be construed as if followed by the words "or intend, arrange, design, build, alter, convert, rent or lease to be used."
- C. The Town of New Shoreham shall be designated by "the Town" or "the Island."
- D. The definitions for words describing natural features, unless otherwise provided in this Ordinance, shall be those adopted by the Rhode Island Department of Environmental Management and the Rhode Island Coastal Resources Management Council and/or set forth in the Rhode Island General Laws of 1956, as amended.
- E. Words or terms, whether or not defined in this Ordinance, which are substantially similar to words or terms defined herein, shall be construed according to the definitions provided in this Ordinance.

Section 202. Definitions.

- A. In the Zoning Ordinance the following words and terms shall have the following meanings:
1. *Abutter*. One whose property abuts, that is, adjoins at a border, boundary or point with no intervening land.
 2. *Access Riser*. A structurally sound and water tight inspection port, which at its lowest point attaches to a septic tank or other component of an ISDS and extends upward to the ground's surface, allowing visual inspection and where necessary physical access to the ISDS for the purposes of maintenance and repair. (Amended November 21, 1998)
 3. *Accessory Apartment*. A unit constructed within the building footprint of a single-family dwelling structure or within an existing accessory structure, to be used as a residence.
 4. *Accessory Dwelling Unit*. A dwelling unit: (i) rented to and occupied either by one or more members of the family of the occupant or occupants of the principal residence; or (ii) reserved for rental occupancy by a person or a family where the principal residence is owner occupied and which meets the following provisions:
 - (a) In zoning districts that allow residential uses, no more than one accessory dwelling unit may be an accessory to a single-family dwelling.
 - (b) An accessory dwelling unit shall include separate cooking and sanitary facilities, with its own legal means of ingress and egress and is a complete separate dwelling unit. The accessory dwelling unit shall be within or attached to the principal dwelling unit structure or within an existing structure, such as a garage or barn, and designed so that the appearance of the principal structure remains that of a one-family residence. (Entire definition amended December 6, 2004)
 5. *Accessory Residential Structure*. Any structure, accessory to a principal use, designed, intended or used for overnight human habitation or occupancy. An accessory residential structure lacks some element of a dwelling unit as defined in this Ordinance and as regulated under Section 511. (Amended December 6, 1999; and June 21, 2000)
 6. *Accessory Structure*. A structure which is customarily incidental and subordinate to the principal structure. An accessory structure shall be restricted to the same lot as the principal structure. An accessory structure shall not be permitted without the primary structure to which it is related. An accessory structure does not include any structure designed, intended or used for overnight human habitation or occupancy. No accessory structure shall be used for overnight human habitation. (Amended December 6, 1999)
 7. *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 be restricted to the same lot as the principal use.
 8. *Affordable Housing*. Residential housing built or set aside for year round habitation for sale or rent, affordable to households whose adjusted gross income is less than one hundred forty percent (140%) of the area median income, adjusted for family size, based on applicable United States Department of Housing and Urban Development schedules. See Section 405, Affordable Housing. (Amended September 27, 2006) (Amended March 5, 2007) (Amended February 20, 2013 by Ord.No. 2013-03)
 9. *Aggrieved Party*. An aggrieved party, for purposes of this Ordinance, shall be:
 - a. A person or entity who can demonstrate that their property will be injured by a decision of any officer or agency responsible for administering the Zoning Ordinance; or
 - b. Anyone requiring notice pursuant to this Ordinance.
 10. *Agricultural Land*. Land suitable for agriculture by reason of suitability of soil or other natural characteristics or past use for agricultural purposes. Agricultural land includes that defined as prime farm land or additional farm land of statewide importance for Rhode Island by the Soil Conservation Service of the United States Department of Agriculture.
 11. *Alteration (of an ISDS)*. Any modernization, modification or change in the size, type or layout of an existing sewage disposal system, including but not limited to, any work associated with a building renovation and/or change of use of that building;

any change needed to accommodate any increase in sewage flow. Minor repairs shall not be considered an alteration. (Amended November 21, 1998)

12. *Applicant*. An owner or authorized agent of the owner submitting an application or appealing an action of any official, board or agency. An authorized agent shall submit documentation of their authority to act for the owner.
13. *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.
14. *Aquaculture*. Farming of designated water bodies wherein organisms such as finfish, algae or shellfish are grown under controlled conditions for harvesting.
15. *Aquifer*. A geological formation that stores and transmits significant quantities of recoverable water; most often designated as a source of drinking water.
16. *Assembly Hall*. A building which is available to the public, including but not limited to auditoriums, conference centers, churches, meeting rooms and halls.
17. *Attached Multi-Family Dwelling*. A dwelling structure containing two or more dwelling units. (See Section 404, Attached Multi-Family Development)
18. *Automotive Service*. The sale of motor vehicle fuel and related materials and services and/or general repair, rebuilding or reconditioning of motor vehicles.
19. *Billboard*. Any sign or advertisement device greater than twelve (12) square feet in area. Any sign or advertising devices not related to use of lot.
20. *Biochemical Oxygen Demand, 5 day test (BOD5)*. A five (5) day test of wastewater strength that measures the dissolved oxygen used by microorganisms in the biochemical oxidation (breakdown) of organic matter. (Amended November 21, 1998)
21. *Buffer*. Land which is maintained in either a natural or landscaped state, and is used to screen and/or mitigate the impacts of development on surrounding areas, properties or rights-of-way.
22. *Build*. To construct or reconstruct or excavate, fill, drain, or conduct physical operations of any kind in preparation for or in pursuance of construction or reconstruction or moving of a building or structure on a lot.
23. *Building*. Any structure used or intended for supporting or sheltering any use or occupancy.
24. *Building Envelope*. The three-dimensional space within which a structure is permitted to be built on a lot and which is defined by regulations governing building setbacks, maximum height, and bulk; by other regulations; and/or any combination thereof.
25. *Building Footprint*. The area within the perimeter of a building's foundation regardless of the number of usable floors, and all of the perimeter area encompassed by an upper story that extends beyond the foundation boundary by means of a cantilever. Building footprint shall include all porches, decks (ground level or elevated), stoops and ramps that are attached to the building. See Appendix I, Figures 1A, 1B and 1C. (The building footprint of all structures shall be measured when determining lot building coverage). (Amended October 6, 2008)
26. *Building Height*. The actual vertical distance from the average natural grade to the highest point of the roof or other structure, excluding chimneys, where the average grade is determined by an actual measurement of the elevation of the natural ground on all sides of the building (see "Grade, Average" and "Grade, Natural") See Appendix I, Figure 2A. (Amended May 21, 2008) (Amended October 6, 2008)
27. *Building Sewer*. The pipe which begins outside the building wall and extends to any place or mechanism of sewage disposal, including but not limited to, a cesspool, leaching chamber septic tank or pressure gravity sewer leading to a leaching chamber. (Amended November 21, 1998)
28. *Building Volume*. The total volume of a building above finished grade, measured in cubic feet from the exterior limits thereof, but not including roof overhangs, decks and unenclosed porches. See Appendix I, Figure 2B. (Added October 6, 2008)
29. *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.
30. *Cesspool*. Any buried chamber including but not limited to any metal tank, perforated concrete vault or covered hollow or excavation, which receives discharges or sanitary sewage from a building sewer, for the purpose of collecting solids and/or discharging liquids to the surrounding soil. (Amended November 21, 1998)
31. *Change of Use*. Any change in use or occupancy of any structure or part thereof which would violate any provision of the RI State Building Code, RI General Laws, Chapter 23-27.3 as amended, and/or any regulation promulgated thereto, without first obtaining the approval of the **Building Official** (or his ~~his~~ their designee) or without the issuance of a certificate of occupancy indicating that the structure complies with the provisions of the state building code for the proposed new use. (Amended November 21, 1998)

32. *Cluster Development*. See Section 402, Flexible Design Residential Development.
33. *Coastal Features*. Those coastal features defined by G.L. 1956, § 46-23-1 et seq.
34. *Coastal Resources Management Council*. The Rhode Island Coastal Resources Management Council (CRMC) and its successors or assigns.
35. *Commercial Kennel*. Any structure, which must be an accessory building, in which more than four (4) dogs are kept, the use of which kennel is for monetary gain.
36. *Commercial/Residential Mixed Use*. The use of a building which is principally commercial for both commercial and residential purposes. See Section 411, Commercial/Residential Mixed Use. (Added July 6, 2009)
37. *Commercial Stables*. The keeping of one or more horses to offer services such as riding lessons, trail rides or related activities for compensation. (Amended March 2, 2009)
38. Common Ownership. Either:
 - a. Ownership by one (1) or more individuals or entities in any form of ownership of two (2) or more contiguous lots; or
 - b. Ownership by any association (such ownership may also include a municipality) of one (1) or more contiguous lots under specific development techniques.
39. *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. All requirements pertaining to local zoning are waived for these community residences;
 - b. A group home for children 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;
 - 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;
 - 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 purposes of fostering independence, self-sufficiency, and eventual transition to a permanent living situation.
40. *Comprehensive Plan*. The current Town of New Shoreham Comprehensive Community Plan as adopted and as amended pursuant to Title 45 Chapter 22.2 of the General Laws of Rhode Island.
41. *Condominium*. A form of ownership of common areas, residential, commercial or marine units, including time-share units, as provided by state statute.
42. *Conventional Septic System*. An ISDS that includes a septic tank and a leach field and meets only the minimum RI code requirements for discharge of wastewater effluent into the soil. Effluent constituents prior to discharge to the soil are typically on the order of 300 mg/l BOD, 250 mg/l TSS, 63 mg/l TN and 10,000,000 fecal coliform/100 mls. (Amended November 21, 1998)
43. *Cornice*. Any projection which crowns or finishes the part to which it is affixed.
44. *Critical Resource Area*. Sensitive land and water resources that provide unique habitat and/or important ecological or economic function(s). For purposes of this Ordinance, such areas include the watersheds for Peckham, Sands, Fresh and Great Salt Ponds, all wellhead protection areas and all wetlands together with their associated buffers as stipulated in Section 506 of the New Shoreham Zoning Ordinance. (Amended November 21, 1998)
45. *Day Care—Day Care Center*. Any other day care center which is not a "Family Day Care Home." For purposes of this Ordinance, a Day Care Center constitutes a business or professional service.
46. *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 sametime to six (6) or less individuals who are not relatives of the care giver, but may not contain more than a total of eight (8) individuals receiving day care.
47. *Days*. Calendar days.
48. *Density, Residential*. The number of dwelling units per developable land area that may be constructed on a given lot. The density is calculated by dividing the number of dwelling units by the total developable land area on the lot.
49. *Department of Environmental Management*. The Rhode Island Department of Environmental Management (RIDEM) and its successors and assigns.

50. *Developable Land*. Land which is considered suitable for development, measured for the purposes of determining allowable density. Developable land shall exclude the following: (Amended October 6, 2008)
 - a. All areas occupied by coastal wetlands (see "Wetland, Coastal"); coastal features including beaches, bluffs and dunes, as determined by the CRMC; and freshwater wetlands and areas of perimeter wetland within 50 feet of the edge of any wetland (see "Wetland, Freshwater"). (Amended October 6, 2008)
 - b. All the land area within easements serving other lots, including but not limited to sewage disposal systems, or wells, but not including scenic and conservation easements, or easements for access.
51. *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.
52. *Development Plan Review*. The process whereby authorized local officials review the site plans, maps, and other documentation of a development to determine compliance with the stated purposes and standards of this Ordinance.
53. *Direct Light*. Light emitted directly from the lamp, off of the reflector or reflector diffuser or through the refractor or diffuser lens of a luminaire. (See Appendix G)(Amended December 4, 2000)
54. *District*. See "Zoning Use District."
55. *Disturbed Area*. An area where the ground and/or its cover is altered or removed leaving the land subject to accelerated erosion; an area now or once used for earth removal; an area where excavations and other materials have been dumped.
56. *Drainage System*. A system for the removal of water from land by drains, grading, or other appropriate means. These techniques may include run-off controls to minimize erosion and sedimentation during and after construction or development, the means for preserving surface [waters] and groundwaters, and the prevention and/or alleviation of flooding.
57. *Drain field*. Synonymous with leach field. (Amended November 21, 1998)
58. *Drive-In Facility*. An accessory use which by design, physical facilities, service, or packaging procedures, allows customers to receive services or goods while remaining in or on their motor vehicles. This shall be construed to include drive-up, drive-through and similar such facilities.
59. *Dump/Sanitary Landfill*. An area set aside for the permanent or temporary storage and/or treatment of waste materials derived from normal residential, business and related activities, but not including hazardous waste materials. This shall not be construed to limit the Town, as permitted by the State, to dispose of municipal waste.
60. *Dwelling Unit*. A structure or portion thereof providing complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress. See also, "Household."
61. *Earth Removal*. The extraction or removal of any soil or topsoil from any tract of land or water body, but excluding the processing of soil transported from off-site areas, and the manufacture of soil-related products such as pre-mixed concrete, bricks, block, and the like, and also excluding regarding or landscaping or normal construction and site work approved under this Zoning Ordinance.
62. *Eave*. The lower edge of a sloping roof; that part of a roof of a building which projects beyond a wall.
63. *Elder Care Facility*. A facility licensed by the State of Rhode Island that provides in-house medical and living support services for persons 62 years of age or older.
64. *Enhanced On-Site Wastewater Treatment Systems*. Systems which achieve the enhanced reduction of contaminants (nutrients, pathogens, BOD, TSS), as compared to conventional septic systems. (Amended November 21, 1998)
65. *Existing Structure*. A structure lawfully existing as of March 4, 1989.
66. *Extractive Industry*. The extraction of minerals, including solids, such as coal and ores; 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 part of the extractive industry.
67. *Facade*. The exterior wall surface of a building.
68. *Failed ISDS System*. Any ISDS that does not adequately treat and dispose of sewage that consequently creates a public or private nuisance or threat to public health and/or environmental quality, as evidenced by, but not limited to, one (1) or more of the following conditions:
 - a. Failure to accept sanitary sewage into the building sewer.
 - b. Discharge of wastewater either directly or indirectly to a subsurface drain, surface drain, wetland, or surface water body.
 - c. Effluent rising to the surface of the ground over or near any part of an ISDS or seeping down-gradient from the absorption area at any change in grade, bank or road cut.

- d. Discharge of improperly treated effluent to ground or surface waters.
 - e. Inadequate treatment and disposal of wastewater due to deterioration, damage, or improper design. (For example inadequate separation distance from the bottom of the leaching system to groundwater or impermeable layer, damage from a vehicle driven over a leach field, structural failure resulting in a leaking tank or undersized tank.)
 - f. Pumping records that indicate very frequent septic tank pumping. A system may be considered failed if the system has been pumped or is in need of pumping two or more times in a calendar year. (Amended November 21, 1998)
69. *Family*. A person or persons related by blood, marriage, or other legal means. See also, "Household."
70. *Farming*. Cultivation of the soil for food products or other useful products of the apiary, field, orchard, vineyard, garden, nursery or greenhouse, breeding or keeping of animals or fowl, raising of livestock or dairying.
- 70.1. *Flagpole*. A flagpole is an accessory structure which consists of two parts: the flag and the structure supporting the flag. Flagpoles are erected only for the purposes of flying a flag or banner representing a country, state or community, or organization, concept or other non-commercial content. In no case shall a flagpole which is an accessory structure consist of or serve the purposes of a sign, which displays lettering, logos and/or trademarks intended to convey a commercial message or advertise a good or service. Any structure containing such content shall be considered a sign and regulated under the provisions of Section 504. (Added January 5, 2015 by Ord. No. 2015-02)
71. *Fixture*. The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror and/or a refractor or lens. (Amended December 4, 2000)
72. *Flexible Design Residential Development*. An alternative residential subdivision which makes use of flexible zoning and site sensitive design standards. See Section 402.
73. *Flood or Flooding*. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or the unusual and rapid accumulation or run off of surface waters from any source.
74. *Flood or Spot Light*. Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction. (Amended December 4, 2000)
75. *Flood Insurance Rate Map*. The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the Town of New Shoreham, effective April 3, 1985, as amended.
76. *Flood Insurance Study*. The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.
77. *Flooding, Area of Shallow Flooding*. A designated "AO Zone" or "VO Zone" on the Flood Insurance Rate Map. The base flood depths range from one (1) to three (3) feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; velocity flow may be evident.
78. *Floodplains or Flood Hazard Area*. An area that has a one percent (1%) or greater chance of inundation in any given year, as delineated by the Federal Emergency Management Agency, pursuant to the National Flood Insurance Act of 1968, as amended, and known as the Federal Emergency Management Agency or its successors.
79. *Floor Area, Living*. The total floor area, measured in square feet from the exterior limits thereof, of that portion of a residential building which is used for habitation purposes, but excluding garage space, unfinished basements and exterior spaces such as porches and decks. (Amended October 6, 2008)
80. *Galley Leach Field*. A type of leach field where the effluent from the septic tank is discharged to a prescribed number of perforated chamber(s) which are typically, although not necessarily, 4 ft x 4 ft x 4 ft and made of concrete. Galley leach field does not include flow diffusers, or infiltrating systems such as Elgen in-drains or the Infiltrator. (Amended November 21, 1998)
- 80.1. *Game Room*. A public place, building or room where three (3) or more gaming devices, machines, or apparatuses, including but not limited to pinball machines, computer gaming devices, electronic gaming devices, and video game machines, are kept for the use and entertainment of the public and where public use of the devices, machines, or apparatuses for a fee is the principal source of income. (Added November 5, 2012 by Ord. No. 2012-09)
- 80.2. *Gaming Device*. A machine, apparatus, computer component or item or items of electronic equipment, connected to an electrical outlet by one cord, which upon the insertion of a coin, slug, token, plate, disc, or card may be operated by the public generally for use as a mechanical, electronic, video, or other game or amusement, whether or not it registers a score and whether or not the operation involves skill. (Added November 5, 2012 by Ord. No. 2012-09)
81. *Glare*. Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see and in extreme cases causing momentary blindness. (Amended December 4, 2000)
82. *Governmental Facility*. A facility which is open to the public and which is owned or leased by the municipality or state and

operated under the direct supervision of the municipality or state, including but not limited to schools, libraries, offices, recreational areas, but not including a public works facility.

83. *Grade, Average.* The average elevation of the grade as measured on at least four (4) sides of a structure, whether natural grade or finished grade. (Amended May 21, 2008)
84. *Grade, Finished.* The measurement of elevation on land that has been altered as a result of development. Finished grade is measured assuming the completion of all building site improvements as represented on final approved building plans. (Added October 6, 2008)
85. *Grade, Natural.* The measurement of elevation on land that is unaltered by human activity. (Amended May 21, 2008)
86. *Gross Area.* The total area of a building, measured in square feet from the exterior limits thereof, including all living areas, attic space, unfinished basements, crawl spaces, porches, decks, attached garages and any exterior space attached to the building, excluding uncovered patios. (Added October 6, 2008)
87. *Groundwater.* Groundwater and associated terms, as defined in Title 46 Chapter 13.1-3 of the Rhode Island General Laws of 1956 as amended.
88. *Halfway Houses.* A residential facility for adults or children who may have been institutionalized for criminal conduct and who require a group setting to facilitate the transition to a functional member of society.
89. *Height of Luminaire.* The height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light emitting part of the luminaire. (Amended December 4, 2000)
90. *Historic District.* One (1) or more historic sites and intervening or surrounding property significantly affecting or affected by the quality and character of the historic site or sites, and which has been registered, or is deemed eligible to be included, on the State Register of Historic Places pursuant to Title 42 Chapter 45-5 of the Rhode Island General Laws of 1956 as amended.
91. *Historic Overlay District.* An overlay zoning district comprised of areas and structures of historic and/or architectural significance to the Island. (See Section 317, Historic Overlay)
92. *Historic Site.* Any real property, man-made structure, natural object, or configuration or any portion or group of the foregoing which has been registered, or deemed eligible to be included, on the State Register of Historic Places pursuant to Title 42 Chapter 45-5 of the Rhode Island General Laws of 1956 as amended.
93. *Home Occupation.* Any activity customarily carried out for gain by a resident, conducted as an accessory use in the resident's dwelling unit. See also, "Accessory Use."
94. *Home Owners' Association.* An affiliation of contiguous home or lot owners, within a cluster development or other subdivision, formed for the express purposes of regulating and funding the care and maintenance of their common lands, buildings, access roads, utility systems and other facilities designated in the original agreement of ownership, as required therein by the Planning Board or otherwise stipulated or required.
95. *Hotel.* A building or building complex containing eleven (11) or more rooms or suites for rent. Each unit must have access from an inside lobby and be without individual cooking facilities. Meals for guests may or may not be provided.
96. *Household.* One (1) 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 servant and employees living with the family; or
 - b. A person or group of no more than six (6) unrelated persons living together.
97. *Impermeable.* Soils, substrata or other material having a permeability equal to or slower than forty (40) minutes per inch. Impermeable surfaces also include such things as rooftops, paved driveways and tennis courts. (Amended November 21, 1998)
98. *Incentive Zoning.* The process whereby the local authority may grant additional development capacity in exchange for the developer's provision of a public benefit or amenity as may be specified in this Ordinance.
99. *Indirect Light.* Direct light that has been reflected or has scattered off of other surfaces. (Amended December 4, 2000)
100. *Individual Sewage Disposal System (ISDS).* A system installed to provide sanitary sewage disposal by means other than discharge into a public sewer system. (Amended November 21, 1998)
101. *Infrastructure.* Facilities and services needed to sustain residential, commercial, industrial, institutional, and other activities.
102. *Inn.* A building or building complex containing three (3) to ten (10) rooms or suites for rent. Each unit must have access from an inside lobby and be without individual cooking facilities. Meals for guests may or may not be provided.
103. *ISDS Treatment Level 1.* A level of on-site wastewater treatment, greater than that provided by a conventional septic

- system, and as described in Section 506, paragraph E(1) (a) of the New Shoreham Zoning Ordinance. (Amended November 21, 1998)
104. *ISDS Treatment Level 2*. A level of on-site wastewater treatment, greater than "ISDS Treatment Level 1," and as described in Section 506, paragraph E(1) (b) of the New Shoreham Zoning Ordinance. (Amended November 21, 1998)
105. *Junkyard*. Any lot, or portion thereof, used for the storage or keeping of non-hazardous junk or scrap materials, or the dismantling or demolition of vehicles, machinery or parts thereof.
106. *Lamp*. The component of a luminaire that produces the actual light. (Amended December 4, 2000)
107. *Land Development Project*. A project in which one (1) 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 this Ordinance. (See Section 402, Flexible Design Residential Development)
108. *Leachfield*. A subsurface area from which septic tank effluent or waste containing little or no solids is leached into the soil. Leach field shall be synonymous with drain field. (Amended November 21, 1998)
109. *Light Assembly*. A business with the equivalent of at least two (2) full-time year-round employees and a dedicated work space of at least one thousand (1,000) square feet that involves the low intensity assembly or manufacture of a product or products in multiple quantities for the purposes of wholesale or retail sale. Such operations do not create noise, vibration, light, glare, smoke, dust, odor or traffic to an extent which would have a deleterious impact on surrounding property, and do not discharge any emission, pollution or hazardous material or waste into the air, ground or water. Light assembly may include one of the following categories: (Amended December 16, 2009)
- a. *Arts and crafts*. articles for aesthetic enjoyment (art objects, pottery, jewelry) from clay, ceramic, metal, stone, glass, wood, paper, leather or similar material, as well as paintings, drawings and photographs; (Amended December 16, 2009)
 - b. *Wood products*. signs, furniture, shelving and containers, and other similar products made of wood, but not the mass processing of lumber into boards and other finished wood materials; (Amended December 16, 2009)
 - c. *Paper products*. printing press, book binding and products made of paper, but not the processing of pulp into paper; (Amended December 16, 2009)
 - d. *Textile products*. processing of fibers into yarn, weaving, lacework, and textile products such as rugs, blankets and clothing items; and (Amended December 16, 2009)
 - e. *Other*. any other low impact assembly or production that meets the above criteria, as determined by the **Building Zoning Official**. (Amended December 16, 2009)
110. *Light Trespass*. The shining of light produced by a luminaire beyond the boundaries of the property on which it is located. (Amended December 4, 2000)
111. *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.
112. *Lot Area*. The total area within the boundaries of a lot, excluding any street right-of-way, usually reported in acres or square feet. (Amended October 6, 2008)
113. *Lot Building Coverage*. That portion of the lot that is or may be covered by buildings or accessory buildings.
114. *Lot Coverage*. That percentage of the total lot area that is or may be covered by all structures and man-made surfaces, such as building footprints, patios, tennis courts, swimming pools and any other similarly altered surface, as well as roadways and parking areas that are constructed with an impervious surface. (Amended October 6, 2008)
115. *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.
116. *Lot Frontage*. That portion of a lot abutting a street. Any lot created after the enactment of this Ordinance shall have contiguous frontage which satisfies, at a minimum, the minimum lot frontage requirements of the zoning district.
117. *Lot Line*. A line of record, bounding a lot, which divides one (1) 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. On corner and through lots, the front lot line shall be that property line which gives priority to main streets over secondary streets, as determined by the Zoning Official.
 - 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

(10) feet in length which is entirely within the lot, and which is 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 which is not a front or rear lot line.
118. *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.
119. *Lot Width*. The horizontal distance between the side lines of a lot, measured at right angles to its depth along a straight line which is parallel to the front lot line at the minimum front setback line.
120. *Low or Moderate Income*. Income not exceeding the low or moderate income standards for the Island set by the Farmer's Home Administration or as established by the Town Council and published in the Office of the Town Clerk.
121. *Low or Moderate Income Housing*. Any housing subsidized by the federal, state or municipal government under any program to assist the construction or rehabilitation as low or moderate income housing, as defined in the applicable federal or state statute or this ordinance, whether built or operated by any public agency or nonprofit organization, or by any limited equity housing cooperative or any private developer, that will remain affordable for ninety-nine (99) years from initial occupancy through a land lease or deed restriction. See Section 712 – Comprehensive Permits for Low and Moderate Income Housing. (Amended September 27, 2006) (Amended February 20, 2013 by Ord. No. 2013-03)
122. *Lumen*. A unit of luminous flux. One (1) foot-candle is one (1) lumen per square foot. For the purposes of this Ordinance the lumen output values shall be the initial lumen output ratings of a lamp. For purposes of example: 1800 lumens is approximately equivalent to one hundred five (105) watts of incandescent light or thirty (30) watts of fluorescent light; nine hundred (900) lumens is approximately equivalent to sixty-two (62) watts of incandescent light or fifteen (15) watts of fluorescent light. (Amended December 4, 2000)
123. *Luminaire*. This is a complete lighting system and includes a lamp or lamps and a fixture. (Amended December 4, 2000)
124. *Major Repair (of an ISDS)*. Any work performed on an ISDS, excluding minor repairs, in order to repair or replace a failed system. (Amended November 21, 1998)
125. *Marina*. Any dock, pier, wharf, float, or combination of such facilities that service five (5) or more boats. A marina shall be considered a commercial enterprise and may be in association with a club and located on or adjacent to navigable waters and may include related services such as restaurants, sail makers and chandlerys, but not residential facilities.
126. *Marsh*. An area of any size over one thousand (1000) square feet and having the characteristics set forth as defining marshes in the wetlands regulations of the Department of Environmental Management.
127. *Mean Sea Level*. Arithmetic mean of observed water elevations over a Metonic Cycle in relationship to the National Geodetic Vertical Datum of 1929. [Reference: Tides and Tidal Datum. D.L. Harris Coastal Engineering Research Center, U.S. Army Corps of Engineers Special Report-7 (Feb. 1981) p. 103.]
128. *Medical Facility*. A facility licensed by the State of Rhode Island and available to island residents and visitors for primary health services and medical and emergency care, as well as occupational and physical therapy, drug and alcohol treatment and counseling services, and consisting of all space, equipment and facilities necessary for examination, diagnosis and treatment.
129. *Minor Repair (of an ISDS)*. Any work performed on an ISDS involving the repair, replacement or upgrade of the building sewer, septic tank or distribution box and/or the installation of inspection ports and/or effluent filters on septic tanks. (Amended November 21, 1998)
130. *Mixed Use*. A mixture of land uses within a single development, building or tract.
131. *Mobile Home*. A structure designed as a dwelling unit for residential purposes, capable of being moved on its own wheels and fixed to a permanent foundation.
132. *Moderate Income*. See "Low or Moderate Income."
133. *Moderate Price*. A moderate sale price for a dwelling unit as established for the Island by the Farmer's Home Administration, or as established by the Town Council and published in the Office of the Town Clerk.
134. *Moderate Rent*. Rent which is a specified percentage below the market rate, as established for the Island by a state or federal department or agency, or as established by the Town Council and published in the Office of the Town Clerk.
135. *Modification*. Permission granted and administered by the **Zoning Official Enforcement Officer**, pursuant to the provisions of Section 705 of this Ordinance, to allow a Dimensional Variance, of up to twenty-five percent (25%), from each of the applicable dimensional requirements of the Zoning Ordinance, as specified in that Section.
136. *Motel*. A building or building complex containing rooms or suites for rent, which is not an inn or hotel, where not all units have access from an inside lobby. No unit may have cooking facilities.
137. *Multi-Family Development*. A land use wherein two (2) or more dwelling units are located on a single lot. This does

not include Accessory Apartments or Accessory Dwelling Units. See also "Attached Multi-Family Dwellings" and "Secondary Dwelling Development." (See Section 403, Secondary Dwelling Development, and Section 404, Attached Multi-Family Development) (Amended December 6, 2004) (Amended July 2, 2007)

- 137.1. *Municipal Government Subsidy*: Assistance that is made available through a Town program to make housing affordable, as defined by the Rhode Island Low and Moderate Income Housing Act; 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. (Added February 20, 2013 by Ord. No. 2013-3)
138. *New Structure*. Structure for which the start of construction, reconstruction, rehabilitation or any other such work for which a Building Permit is required commenced on or after the effective date of this Zoning Ordinance.
139. *Non-Conformance*. A building, structure, or parcel of land, or use thereof, lawfully existing at the time of the adoption or amendment of this Ordinance and not in conformity with such provisions of the Ordinance or amendment. Non-conformance shall consist of only two (2) types:
- a. *Non-Conforming 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 or regulation of the Ordinance shall be non-conforming by use; or
 - b. *Non-Conforming by Dimension*. A building, structure, or parcel of land not in compliance with the dimensional regulations of this Ordinance. Dimensional regulations include all regulations of the 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 the Ordinance shall be non-conforming by use; a building or structure containing a permitted number of dwelling units by the use regulations of the Ordinance, but not meeting the lot area per dwelling unit regulations, shall be non-conforming by dimension.
140. *Open Space*. Land, primarily undeveloped, which may be public, semi-public or private, the purpose of which is to provide for the conservation of land and other natural resources and to provide park, recreational, historic and scenic areas.
141. *Outdoor Lighting*. The nighttime illumination of an outside area or object by any man-made device located outdoors that produces light by any means. (Amended December 4, 2000)
142. *Overlay District*. A district established in this Ordinance that is superimposed on one (1) or more districts or parts of districts that imposes specified requirements in addition to, but not less than, those otherwise applicable for the underlying zone.
143. *Owner*. Any person who alone, jointly, or severally with others has a legal title to any premises.
144. *Parking Area or Lot*. All that portion of a development that is used by vehicles, the total area used for vehicular access, circulation, parking, loading and unloading.
145. *Performance Standards*. A set of criteria or limits relating to elements which a particular use or process either must meet or may not exceed.
146. *Permitted Use*. A land use permitted as of right so long as dimensional standards and appropriate overlay district regulations are met.
147. *Person*. The term person shall include any individual, group of individuals, firm, corporation, association, partnership or private entity, including a district, city, town or other government unit or agent thereof, and in the case of a corporation, any individual having active and general supervision of the properties of such corporation.
148. *Plane, Building*. That portion of a building facade aligned in the same general plane. A building angle of 45 degrees or greater with a minimum distance of 16 feet from the building facade (measured at a right angle from the building facade) shall be considered an interruption of the building plane. See Appendix I, Figures 3A and 3B and Figures 5A and 5B. (Added October 6, 2008)
149. *Plane, Wall*. That portion of a building plane of consistent height and roof style. A perpendicular recess of at least six feet in depth shall be considered an interruption of the wall plane. See Appendix I, Figure 3C and Figures 4A, 4B and 4C. (Added October 6, 2008)
150. *Planned Development*. A "Land Development Project," as regulated by this Ordinance, and developed according to plan as a single entity and containing one (1) or more structures and/or uses with appurtenant common areas. See also "Flexible Design Residential Development."
151. *Pond*. An area of any size over 1000 square feet where open standing water is present at least six (6) months of the year.
- 151.1. *Power Generator*. A machine which burns fuel to convert mechanical energy into electrical energy. (Generators with a capacity over 20 kW for private use require a special use permit under Section 426). (Added June 18, 2014 by Ord. No. 2014-07)
152. *Pre-Application Conference*. A review meeting of a proposed development held between applicants and the Planning Board and/or staff, as provided in this Ordinance, before formal submission of an application for a permit or for

development approval. This provides developers the opportunity to present their proposals informally and to receive comments and directions from the Town. (See Section 702F, General Procedures, Pre-Application)

153. *Professional and Business Services.* Activities including, but not limited to banking and associated services, financial services, real estate, management, tax consulting, engineering, accounting, photography, art gallery and/or school, medical services, legal services. The term Professional and Business Services shall not include drive-up facilities.
154. *Public Shoreline Access Way (Right-of-Way) to Water.* An unobstructed path or corridor from a public thoroughfare or facility leading to or along shoreline areas below the mean high water mark.
155. *Public Works Facility.* A facility owned or leased and operated under the direct supervision of the municipality or state, the purpose of which is to store and/or service equipment and materials associated with the repair and maintenance of governmental facilities, roadways, or other areas of governmental responsibility.
156. *Recreational Facility.* A facility for sport or passive enjoyment by the public whether owned, operated and maintained by a government entity or privately. (Amended November 7, 1994)
157. *Religious Facility.* A facility used primarily for worship and related activities.
158. *Rental.* Real estate leased or otherwise made accessible and useful to designated renters for a stipulated period of time for compensation.
159. *Rental Rooms.* One (1) or two (2) bedrooms within an owner-occupied dwelling unit, which may be rented upon receiving prior approval from the Town. (See Section 509, Rental Rooms)
160. *Residence.* An abode, home, habitation or place of dwelling.
161. *Restaurant:* A facility for the preparation and serving of food and beverages.
162. *Retail Trade:* Any business engaged primarily in the sale, rental or lease of goods and/or services individually or in small quantities to the ultimate consumer for direct consumption and/or use, and not for resale. The term Retail Trade shall not include automotive rental or services, drive-up facilities or any type of restaurant, or any uses prohibited by Section 111, General Prohibitions.
163. *Rhode Island General Laws (RIGL).* The General Laws of the State of Rhode Island, 1956, as amended.
164. *Secondary Dwelling Development.* A land use wherein two (2) unattached dwelling units are located on a single lot according to the procedures and standards contained in Section 403. (Added July 2, 2007)
165. *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. (Amended November 19, 2001)
166. *Setback, Accessory Structures and Uses.* The various definitions of setbacks contained in the ordinance, pertaining to principal structures and uses, shall also apply to any accessory structure or use on the lot. (Amended November 19, 2001)
167. *Setback, Front.* An open unoccupied space on the same lot with the structure extending the full width of the lot and situated between the street line and the front line of the structure projected to the side lines of the lot. (Amended November 19, 2001)
168. *Setback, Rear.* An open unoccupied space on the same lot with the structure extending the full width of the lot and situated between the rear line of the lot and the nearest line of the structure on the lot. (Amended November 19, 2001)
169. *Setback, Side.* An open unoccupied space between the side line of the lot and the nearest line of the structure and extending from the front yard to the rear yard, or in the absence of either of such yards, to the streets or rear lot lines as the case may be. (Amended November 19, 2001)
170. *Sewer, Public.* A municipally owned and operated sewer system. Presently the system that services the area from around Old Harbor to New Harbor and which is serviced by the sewer plant off Spring Street.
171. *Shallow Drain Field.* Any ISDS that discharges effluent, to a pressure-dosed, shallow, narrow drain field, generally by means of a pump. (Amended November 21, 1998)
172. *Sign.* Any display of lettering, logos, colors, lights, trade flags or illuminated sign device including neon tubes visible to the public from the outside of a building or from a traveled way which either conveys a message to the public, or intends to advertise, direct, announce or draw attention to, directly or indirectly, a use conducted, goods, products, services or facilities available, either on the lot or any other premises; excluding window display merchandise which shows no advertising, and excluding properly existing pavement markings or directional arrows painted on the ground and which show no advertising. (See Section 504, Signs) This definition shall be construed in conjunction with other applicable definitions.
 - a. *Attached Sign.* A sign which is affixed to any structure. This may include, but is not limited to, roof signs, wall signs, projecting signs, and signs attached to buildings and sheds.
 - b. *Directory Sign.* Any off-premises free-standing sign containing more than one (1) store name on individual panels.

- c. *Flashing Sign.* A sign whose illumination is not kept constant in intensity at all times when in use, and/or which exhibits changes in light, color, direction or animation. For the purposes of this section, illuminated signs which indicate exclusively the date, time and temperature are not considered flashing signs, provided however they meet all other provisions of this section.
 - d. *Free-Standing Sign.* A self-supporting sign not attached to any building, wall, or fence, but in a fixed location.
 - e. *Illuminated Sign.* Any sign lit by electrical bulbs, fluorescent lights, or neon tubes. Neon tubes used as abstract, graphic, decorative or architectural elements shall be considered an illuminated sign.
 - f. *Marquee.* A permanent canopy often of metal and glass above a theater entrance containing the name of a currently featured film or play and its stars.
 - g. *Moveable Sign.* A sign capable of being readily moved or relocated, including portable and A-frame signs and those on a chassis or wheels or supported by legs.
 - h. *Off-Premises Sign.* Any sign which is not on the premises of the business, including a billboard. Not an on-premises sign.
 - i. *On-Premises Sign.* Any sign which advertises, calls attention to, or identifies the occupant of the premises on which the sign is maintained, or the business transacted thereupon.
 - j. *Projecting Sign.* Any sign which is affixed to a building or other structure, is affixed at a right angle, and which extends more than six (6) inches beyond the surface to which it is affixed.
 - k. *Roof Sign.* Any sign which is located above, or projects above, the lowest point of the eaves or the top of the parapet of any building, or which is painted on or fastened to a roof.
 - l. *Symbol.* A three-dimensional, two-sided representation of the primary generic merchandise sold on the premises, usually mounted on a bracket perpendicular to the shop front.
 - m. *Temporary Sign.* A sign intended to be used for a period of no more than thirty (30) days. Exceptions for devices intended for civic purposes may be granted by special permit from the Zoning Board of Review.
 - n. *Trademark.* The registered name, figure, letter, word or mark adopted and used by a manufacturer or merchant in order to designate his their goods and to distinguish them from any others.
 - o. *Wall Sign.* Any sign which is painted on, incorporated into, or affixed parallel to the wall of a building and which extends not more than six (6) inches from the surface of that building.
- 173. *Site Plan.* The development plan for one (1) or more lots on which is shown the existing and/or the proposed conditions of the lot. (See "Land Development Project" and Section 703, Procedures for Special Use Permit)
 - 174. *Soil.* Any earth, sand, clay, loam, gravel, humus, rock, mineral or other earth product irrespective of the presence therein of organic matter.
 - 175. *Solid Waste Transfer Facility.* A facility owned by and operated under the direct supervision of the municipality for the temporary storage and sorting of solid waste and recyclable material prior to its removal and disposal. (Amended December 7, 2009)
 - 176. *Special Use.* A regulated use which is permitted pursuant to the Special Use Permit issued by the Zoning Board of Review, pursuant to Section 704 of this Ordinance.
 - 177. *Start of Construction.* The placement of permanent construction of the principal structure on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, the installation of streets and/or walkways, excavation or the erection of temporary forms for basements, footings, piers or foundations. For a principal structure without a basement or poured footings, the start of construction includes the first permanent framing or assembly of the structure or any part thereof on its pilings or foundation.
 - 178. *Street.* A public or private thoroughfare used, or intended to be used, for passage or travel by motor vehicles. Streets are classified by hierarchy according to function (see "Street Classification" as defined in the New Shoreham Land Development and Subdivision Regulations), and may be one of the following:
 - a. *State Road.* A right-of-way owned and maintained by the State of Rhode Island, and dedicated for use by the public.
 - b. *Town Road.* A right-of-way which has been improved to Town road standards, has been dedicated for use by the public and has been accepted for maintenance by the Town.
 - c. *Private Road.* A right-of-way paved or unpaved, not maintained by the Town or State and not dedicated for use by the public. As used herein, the term "road" shall be synonymous with "street."
 - 179. *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, including but not limited to porches, patios, stairs, decks and flagpoles.

180. *Subdivision*. See: Land Development and Subdivision Regulations of the Town of New Shoreham [appendix D to these Revised Ordinances].
181. *Substandard Lot of Record*. Any lot lawfully existing at the time of adoption or amendment of this Ordinance and not in conformance with the dimensional and/or area provisions of this Ordinance.
182. *Swamp*. An area of any size over 1,000 square feet and having the characteristics set forth as defining swamps in the wetlands regulations of the Department of Environmental Management.
- 182.1. *Table Game*. A game played on a horizontal surface, including but not limited to a billiard table, a bagatelle table, a pool table, or a scippio table, that is available for the use and entertainment of the public. (Added November 5, 2012 by Ord. No. 2012-09)
183. *Temporary Outdoor Lighting*. The specific illumination of an outside area or object by any man-made device located outdoors that produces light by any means for a period of less than seven (7) days with at least one hundred eighty (180) days passing before being used again. (Amended December 4, 2000)
184. *Theater*. A place of assembly having facilities for an audience and for a stage, screen, platform, or other area to be used for lectures, performances or other presentations attended by an audience.
185. *Time-Share*. A form of ownership wherein two (2) or more parties own a unit (usually a condominium unit), each for a stipulated period of time each year.
186. *Tipping Distribution Box*. A type of distribution box where the effluent from the septic tank flows into a tipping pan, which when full, empties into the leach field lines, thereby facilitating a more uniform distribution of effluent over the entire leach field. (Amended November 21, 1998)
187. *Total Suspended Solids (TSS)*. Solids physically suspended in wastewater. (Amended November 21, 1998)
188. *Toxic or Hazardous Materials*. Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of the Town. Toxic or hazardous materials include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, herbicides, solvents and thinners.
189. *Transportation Facility*. A facility providing public transport by land, air, or water and including the buildings, parking, service, loading and unloading areas, wharfs and docks associated with such transport.
190. *Uplighting*. Any light source that distributes illumination above a ninety degree (90;deg;) horizontal plane. (Amended December 4, 2000)
191. *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.
192. *Utility Facility*. A facility, whether publicly or privately owned, which provides direct or indirect utility service to the public, including but not limited to, water works, sewage and water pumping stations and treatment facilities, telephone electronic equipment structures, electric power sub-stations and transformer stations and mobile radio service equipment and antennae. Local utility transmission lines are excluded from this definition as are radio broadcast stations, television broadcast stations and related antennae and other transmission facilities, and telecommunications towers. (Amended October 3, 1994)
193. *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 this 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 this 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 this Ordinance.
- b. *Dimensional Variance*. Permission to depart from the dimensional requirements of this 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.
194. *Warehouse and Storage Facility*. A land area where goods or materials are stored in a warehouse facility and/or in specific outdoor areas.
195. *Water Supply Protection Program (WSPP)*. An Island-wide program of various zoning and subdivision regulations, ordinances, educational programs and management practices that are, at a minimum, designed to preserve the existing quality of Block Island's ground and surface water reservoirs. (Amended November 21, 1998)
196. *Water Table*. The upper surface of the water-saturated zone of the soil. (Amended November 21, 1998)

197. *Waterfront Uses*. Uses adjacent to coastal waters as permitted and regulated by the Rhode Island Coastal Resource Management Council (CRMC).
198. *Wellhead Protection Area (WHPA)*. The critical portion of a three dimensional zone surrounding a public well or well field, through which water will move towards and reach such well or well field as designated by the Director of the DEM or as adopted by the Town. (Amended November 21, 1998)
199. *Wetland, Coastal*. A salt marsh bordering on the tidal waters of this state and contiguous uplands extending no more than fifty (50) yards inland therefrom, or as defined by under the General Laws of Rhode Island as amended.
200. *Wetland, Freshwater*. A marsh, swamp, bog, pond, river, river or stream floodplain or bank, area subject to flooding or storm flowage; emergent or submergent plant community in any body of fresh water; or area within fifty (50) feet of the edge of a bog, marsh, swamp, or pond, or as defined by Title 2 Chapter 1-20 of RIGL.
201. *Wind Energy Conversion System (WECS)*. Mechanisms and related facilities designed or operated for the purpose of converting wind energy to electrical and/or mechanical power. (See Section 508, Wind Energy Conversion System) (Amended May 23, 2001)
202. *WECS, Utility*. A wind turbine installed for the purpose of providing an additional power source for municipal or general public use, and which is part of the electrical power production and distribution system for New Shoreham, or in the event of a cable connection to the mainland, integrated into the publicly regulated electric grid system. (Amended December 7, 2009)
203. *Zoning*. The reservation of certain specified areas within the Town of New Shoreham for building and structures, or use of land, for certain purposes, with other limitations such as height, lot coverage, and other stipulated requirements.
204. *Zoning Certificate*. A document signed by the **Zoning Official Enforcement Officer**, as required in this Ordinance, which acknowledges that a use, or structure, building or lot either complies with or is legally non-conforming to the provisions of this New Shoreham Zoning Ordinance or is an authorized variance or modification therefrom.
205. *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 the Town.
206. *Zoning Use Districts*. The basic unit of zoning, either mapped or unmapped, to which a uniform set of regulations applies, or a uniform set of regulations for a specified use applies.

ARTICLE 3. - ZONING DISTRICTS AND REGULATIONS

Section 302. Zoning Maps.

A. The zoning districts of the Town are shown on a map entitled "New Shoreham Zoning Map," dated June 5, 1967, revised to March 4, 1989 and on file in the office of the Town Clerk, which map, and any amendments thereto, are hereby made a part of this Zoning Ordinance ("Zoning Map").

B. The Flood Control Overlay (FC Overlay) district. The district includes all special flood hazard areas within the town designated as Zone A, AE, AH, AO, A99, V, or VE on the Washington 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 Washington County FIRM that are wholly or partially within the Town of New Shoreham are panel numbers 44009C0352J, 44009C0353J, 44009C0354J, 44009C0356J, 44009C0358J, 44009C0361J, 44009C0362J, 44009C0363J, 44009C0364J, 44009C0366J and 44009C0368J dated October 16, 2013. 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 Washington County flood insurance study (FIS) report dated October 16, 2013. The FIRM and FIS report and any revisions thereto are incorporated herein by reference and are on file with the **Building Official**. (Amended September 15, 2010) (Amended October 7, 2013 by Ord. No. 2013-11)

C. The Pond Quality Overlay (PQ Overlay) is as defined in Section 316

D. The Historic Overlay (H Overlay) is as shown on the New Shoreham Historic District Map, which map, and any amendments thereto, are hereby made a part of this Zoning Ordinance.

1. Amendments.

- a. Pursuant to Ordinance No. 2012-06, adopted June 4, 2012:

The New Shoreham Zoning Map is amended to add the property of the William J. Penn Revocable Living Trust at File# 815, Plat 18, Lot 66 off Beacon Hill Road currently zoned as Residential A, to the Historic District. (Ord. No. 2012-06, June 4, 2012)

- b. Pursuant to Ordinance No. 2013-02, adopted January 16, 2013:

The New Shoreham Zoning Map be changed to add Plat 18, Lot 6-1 to the Historic District amending the New Shoreham Zoning Map to add Plat 18, Lot 6-1, West Side Road, the Estate of David K. Harrison, currently zoned as Residential A, to the Historic District. (Ord. No. 2013-02, January 16, 2013.)

- E. The Waterfront Overlay (W Overlay) is as defined in Section 318.

Section 320. - Public Education Zone (PE Zone).

A. *Purpose.* The Public Education Zone comprises property which is to be limited in use to public education purposes. Recognizing the costs associated with providing quality education to the citizens of the Town, an integral part of which is the physical plant and the land costs inherent in any school construction, this Zoning District is designed to provide the maximum utilization of this Zone for the permitted purposes. This Zone permits educational and related facilities, including schools and office and clerical support, necessary to service the requirements of the Town.

B. *Designation of Zone.* The Zone shall consist of Lot 1 on Tax Assessor's Plat 10.

C. *Dimensional Standards.*

Minimum Lot Area	150,000 squarefeet
Minimum Lot Frontage	150' feet
Minimum Setbacks	
Front	10 feet
Side	10 feet
Rear	5 feet
Maximum Lot Building Coverage	50%
Maximum Lot Coverage	75%
Maximum Height	
Main Structure	50 feet
Accessory Structure	35 feet

D. *Permitted Principal Uses.* The permitted uses shall be schools.

E. *Permitted Accessory Buildings, Structures and Uses.* The following accessory buildings, structures and uses may be permitted as part of any Development Plan:

1. Off street parking and loading;
2. Any accessory building, structure or use customarily incidental and directly related to the operation of the principal use of the property;
3. Signs, subject to the provisions of this Zoning Ordinance;
4. Recreation fields and facilities used in conjunction with the principal use.

F. *Utilities.* The following regulations regarding utilities shall govern all Development Plans:

1. All structures and uses shall be served by public water and sewer if possible.
2. All utilities shall be underground and shall be in accordance with the Land Development and Subdivision Regulations and the Utility Standards of the Town.
3. Unless granted a modification or waiver by the Planning Board during Development Plan Review, all site improvements shall conform to any applicable provisions of the Land Development and Subdivision Regulations and the Utility Standards of the Town.

G. *Procedure.* Notwithstanding any other provisions of this Ordinance no construction or alterations to buildings, structures or other site improvements shall be permitted unless and until Development Plans shall have been reviewed and approved by the Planning Board as set forth in Sections 501, Development Plan Review Standards, and 704, Development Plan Review, of this Ordinance.

1. *Submittals.* In addition to any other submittals required under Development Plan Review or the Utility Standards the applicant shall also submit:
 - a. A map showing, for all properties within four hundred (400) feet of the property, the locations of all zoning district boundaries, property lines, existing and proposed structures, sites of historic or archeological importance, land uses, and unique natural features of the landscape, wells and other public water supplies.
 - b. If the project is being proposed for phased development, a description and timing plan for the phasing along with a construction sequence and time schedule for completion of each phase for buildings, parking, and landscaped areas must be provided as part of the Development Plan Review.
 - c. Architectural plans for any new construction or exterior alterations to any existing structure.
 - d. If any modifications of any utility standards are being requested, a written request for such waiver or modifications specifying exactly the standard or regulation being modified, the alternative proposed, the reasons why

the standard or regulation cannot be met and the justification for the modification.

e. A written narrative as to the reasons the proposal meets the Comprehensive Plan.

2. *Planning Board Action.* No final approval of any Development Plan or modification requests may be given by the Planning Board unless and until it has received and considered written comments on the Plan and any requested modifications from the Town Engineer, the Conservation Commission, the Historic District Commission, the **Building Official**, the Police Chief, the Fire Chief, the Superintendent of Schools, the Town Manager, the Public Works Director, the Sewer Commission, the Land Use Administrative Officer, and the Town Solicitor.

(Section Added May 1, 2000)

ARTICLE 4. - CRITERIA FOR SPECIAL USE PERMITS

Section 421. - Cellular Antenna Towers.

A. The purpose of this Section is to ensure that the development of cellular communications to service the current and future needs of the Town is done in a manner which will conserve the value of land and buildings, minimize the visual impact of antennae and support structures, and minimize the number of towers which will be required to support the development of the system.

B. Cellular antennae, and towers supporting them, shall be allowed only in the Service Commercial Zoning District, and then only upon the granting of a Special Use Permit by the Zoning Board of Review. Any proposed modification to an approved telecommunications tower facility, including the antenna arrays, must be reviewed and approved by the Planning Board, Historic District Commission (if required), and the **Building Official**. Approval of a telecommunication tower facility shall mean approval of a Special Use Permit by the Zoning Board under Section 421 herein. (Amended June 21, 2000)

C. An applicant for such a Special Use Permit shall satisfy the following conditions:

1. The applicant shall demonstrate that all possible avenues for sharing space on an existing tower have been exhausted.
2. The maximum power output and maximum exposure limits, at ground level, must fully comply with the applicable Federal Communications Commission (FCC) standards.
3. All antennae shall be mounted higher than ninety (90) feet above ground level, and only at a lower height if permitted by a specific FCC standard.
4. The tower shall not exceed a height of two hundred fifty (250) feet above ground level. The applicant shall provide evidence that the Federal Aviation Administration has determined that the location and height of the tower upon which the antennae are to be installed do not constitute a hazard to air navigation.
5. The tower shall not be located within two hundred fifty (250) feet of any existing residential structure, or within two hundred fifty (250) feet of the building envelope of an undeveloped lot zoned for residential use. The Zoning Board of Review may reduce this setback to a minimum of one hundred (100) feet upon a showing that the two hundred fifty (250) feet is unnecessary for the location and design of the tower proposed. (Amended June 21, 2000)
6. Any change in the nature, type, or design of the antennae tower, or other elements of the system, including the number of channels initially approved, shall require another Special Use Permit.
7. The applicant must demonstrate that the proposed system is the minimum necessary to provide cellular service to New Shoreham customers.
8. The owner must agree to provide the Zoning Enforcement Official with a copy of any notice to the Federal Communications Commission of intent to cease operations. The owner must agree that if operations are ceased, the owner will remove the antenna or antennae, and any accessory structures, including the tower if such tower is no longer in use, within ninety (90) days. A bond shall be provided, in a form acceptable to the Town's Finance Director, ensuring the compliance by the owner with the requirements of this subsection.
9. The owner must agree to provide the Town with a certificate of insurance coverage for any injury or damage resulting from the facility so long as it is in place. The certificates shall be in a form acceptable to the Town's Finance Director and provide for notice of cancellation to the Town.

D. In addition to any other information or material that shall be required of an applicant for a Special Use Permit, an applicant under this Section shall provide, with its application, the following:

1. A site plan, drawn to scale, showing existing and proposed features, including topography at not greater than ten (10) foot contours and complete landscaping plans.
2. A written narrative report containing:

- a. A description of the antennae and the tower with technical details and an explanation of the reasons for its particular design;
 - b. Data demonstrating that the structure supporting the antennae will be adequate to support its existing, proposed and anticipated use(s);
 - c. A description of the general capacity of the tower;
 - d. Data demonstrating that all applicable ANSI standards are met;
 - e. A statement concerning the availability of excess space and whether it will be rented;
 - f. Proof of ownership of the proposed site or legal right to its use.
3. A study using photographs, narrative or both, that describes where, and to what extent, any portion of the antennae or tower will be visible within a three (3) mile radius of its location.

(Section Amended December 17, 1997)

ARTICLE 5. - PERFORMANCE STANDARDS

Section 502. - Off-Street Parking/Sidewalks.

- A. Off-Street Parking Minimum Standards. Off-street parking in conformance with the following minimum requirements shall be provided and maintained for new construction, expansion of existing uses or structures, and changes of use. Where several uses occupy a single structure or lot, the total required parking shall be the sum of requirements of the individual uses. These minimum requirements will not be satisfied by street parking. Except as specifically allowable with a Special Use Permit, parking shall not be a primary use on any lot.
1. Accessory Apartment. One (1) parking space in addition to any other off-street parking requirement for other structures and uses on the property.
 2. Assembly Hall: One (1) parking space per three (3) seats of total available capacity. In Old Harbor Commercial Zone (OHC): One (1) parking space per five (5) seats.
 3. Commercial/Residential Mixed Use: One (1) parking space per dwelling unit plus the requirements contained herein for the commercial use or uses. (Added December 16, 2009)
 4. Dwelling Units: Two (2) parking spaces per dwelling unit. In Old Harbor Commercial Zone (OHC): One (1) parking space per dwelling unit.
 5. Governmental Facilities: Anticipated need, to be located in defined areas within at least fifty (50) feet from abutting uses. (Amended December 16, 2009)
 6. Hotels and Inns: One (1) parking space per three (3) guest rooms; plus one (1) employee parking space for every ten (10) rooms. In Old Harbor Commercial Zone (OHC): One (1) parking space per four (4) guest rooms, plus one (1) employee parking space for every ten (10) rooms.
 7. Light Assembly: One (1) parking space per two (2) employees based on the largest number of employees to be working at any given time. In Old Harbor Commercial Zone (OHC): One (1) parking space per three (3) employees based on the largest number of employees at any given time. (Added December 16, 2009)
 8. Marina: One (1) parking space per ten (10) boats plus one (1) space per 1.5 employees; plus additional parking as required for any other facilities, uses or accessory or associated uses.
 9. Professional and Business Services: One (1) parking space per 1000 square feet of gross floor area, plus one (1) space per 1.5 employees. (Amended December 16, 2009)
 10. Restaurant, Carry-Out: Three (3) parking spaces. In Old Harbor Commercial Zone (OHC): Two (2) parking spaces
 11. Restaurant, General: One (1) parking space per ten (10) seats. Restaurant included in Hotel or Inn: One (1) parking space per fifteen (15) seats.
 12. Retail Trade: One (1) parking space per five hundred (500) square feet of gross floor area plus adequate employee parking. In Old Harbor Commercial Zone (OHC): One (1) parking space per store. (Amended December 16, 2009)
 13. Transportation Facility: Short term and long term parking spaces as determined by anticipated need, to be located in defined areas within at least fifty (50) feet from abutting uses. (Amended December 16, 2009)
 14. Utility Facility; Warehouse and Storage Facility: one (1) parking space per three (3) employees. (Amended December 16, 2009)

15. Uses Not Otherwise Specified: In the event the proposed use is not one of those specifically enumerated above, the determination of the required off-street parking shall be made by the **Building Zoning Official** using the enumerated uses as a guide and considering, as appropriate, the square footage of the use, the occupancy, capacity and number of employees associated with any structure or use, the state fire and building codes and any other sources the **Building Zoning Official** may deem appropriate to make a determination. (Amended January 21, 2004)

B. Loading Space.

1. In connection with every commercial property requiring the receipt or distribution by vehicles of material or merchandise, there shall be provided and maintained, on the same property, at least one (1) off-street loading space.

2. Each loading space shall be not less than ten (10) feet in width, twenty-five (25) feet in length, and fourteen (14) feet in height. Such space may occupy all or any part of any required yard or court space, subject to the following limitations.

C. Dimensional and Construction Requirements. Required off-street parking shall be in lots with spaces organized in right angle configurations where feasible in accordance with the following dimensional table of standards:

PARKING DIMENSIONS IN FEET*

Parking Angle	Stall Width Parallel to Aisle	Stall Depth	Aisle Width
90 Degree (90;deg;)	9.0	18.5	22
45 Degree (45;deg;)	12.7	17.5	12

*Exception for marinas: three hundred (300) square feet is required for each parking space in a marina.

1. Aisle width shall be measured between ends of stall lines. For back-in parking aisle width may be reduced by four (4) feet.
2. Angle parking at forty-five degrees (45;deg;) with adjacent one-way aisles in the same direction shall be used only with sufficient barriers to prevent vehicular contact across the interlock.
3. Off-street parking shall be located on the same lot as the primary use except that the Zoning Board of Review may by Special Use Permit allow the use of off-site premises for parking when the public benefit of the proposed use so warrants.
4. Egress shall be designed to provide a safe and unobstructed one hundred (100) foot sight line to traffic in each direction.
5. Parking areas shall be designed so as not to require the backing of vehicles onto any public street.
6. In so far as practicable, parking areas shall be recessed from the road with planting that screens parked cars from the road.
7. No building, stonewall or tree row may be removed for the construction of parking spaces except where this is unavoidable.
8. Lighting of parking areas shall be located no higher than ten (10) feet from the ground and shall cast light downward. No spill light is permitted which causes glare on an abutting lot or to vehicles traveling on an abutting road.

D. Large Lot Parking. For parking areas of twenty (20) spaces or more the following additional requirements shall apply:

1. Large lot parking areas must receive development plan approval pursuant to the standards set forth in Section 501, Development Plan Review Standards, and the procedures set forth in Section 704, Development Plan Review.
2. No large lot shall be operated as a rental facility except by a Special Use Permit pursuant to Section 420, Parking Lots.
3. Large lots, except for those serving transportation facilities or located in the Old Harbor Commercial Zone shall be screened on each side facing a street or abutting property by a wall, fence or compact hedge no less than three (3) nor more than five (5) feet high. Parking areas serving up to twenty (20) cars each shall be separated by planted buffers at least ten (10) feet wide.

E. Sidewalks. Within the OHC, NHC, and SC Zones, sidewalks shall be provided as part of site development along all principal roads to provide pedestrian access to and between public and private facilities.

F. No part of an off-street parking area or off-street loading area required for any building or use for the purpose of complying with the provisions of this chapter, shall be included as a part of an off-street parking area or off-street loading area similarly required for another building or use unless the type of structure indicates, in the opinion of the Planning Board, that the periods of usage of such buildings or uses will not be simultaneous with each other.

G. Nothing in this chapter shall be construed to prevent the joint use of off-street parking or off-street loading space for two (2) or more buildings or uses if the total of such spaces when used together shall not be less than the sum of the requirements

of the various individual uses computed separately in accordance with the requirements of this article.

Section 504. – Signs. *(Excerpts of section amended in 2018)*

A sign permit shall be required for all signs hereafter erected, installed or replaced, unless specifically exempted by this Section. Such permits shall be issued by the **Building Official** and shall be in addition to any other permits or approvals required by this or any other ordinance of the Town or State.

The following are prohibited: Any sign which, in the determination of the **Building Official** or Police Chief, constitutes a hazard to public safety or health, or which impedes vision or access to or from public streets, sidewalks or other places of ingress or egress, including signs which by reason of size, location, content or manner of illumination, obstruct the vision of a driver, or detract from the effectiveness of traffic-control devices;

Obsolete Signs. Any sign which advertises an area, use, property, business or product no longer actively sold or promoted on the site upon which the sign is located, shall be considered to be obsolete and shall be removed within thirty (30) days after the date that it becomes obsolete. If an obsolete sign is not removed within thirty (30) days, the **Building Zoning Official** shall give written notice of the violation to the owner of the property on which the sign is located, ordering to remove any such sign within ten (10) days from the date of the notice. Upon failure to comply with the provisions of the notice, the **Building Zoning Official**, in addition to other action allowed by law, may remove the sign at the expense of the owner of the property from which the sign is removed.

13. Unlawful Signs. Where the sign becomes unsecured, is in danger of falling, or is otherwise unsafe, or if a sign is unlawfully installed, erected, or maintained in violation of any provisions of this code then, upon written notice of the **Building Official or Zoning Official** to the owner of the property on which the sign is located, the sign shall be removed or made to conform to the provisions of this section forthwith in the case of immediate danger and in any case within not more than ten (10) days from the date of notice. If within ten (10) days the order is not complied with, the **Building Official or Zoning Official** shall remove such sign at the expense of the owner of the property on which the sign is located.

14. Unsafe Signs. The **Building Official** may require any sign or advertising structure which is an immediate peril to persons or property to be removed summarily and without notice.

Permit Procedure. Any persons intending to erect, relocate or alter any sign shall, except as otherwise provided in this Section, make application to the **Building Official**.

The Historic District Commission shall review all applications for all sign permits within the Historic District. For those signs outside the Historic District, the **Building Official** may request an advisory opinion from the Historic District Commission.

Section 506. - Onsite Wastewater Treatment Systems (OWTSs).

Definitions. Any term not defined herein, shall be governed by the definition as it appears in the current OWTS Rules.

"Alternative OWTS Component" means any part of an OWTS that does not meet the design or construction requirements as provided by the OWTSs Rules, but has been demonstrated through field testing, calculations and other engineering evaluations to be equal to, or provide the equivalent performance of any part of an OWTS within the OWTSs Rules or to enhance or facilitate treatment, maintenance, longevity or efficiency of an OWTS, and for which a certification from RIDEM has been issued.

"Alternative Technology" means any OWTS technology for which design parameters are not specified in the OWTSs Rules, but has been demonstrated through field testing, calculations and other engineering evaluations to comply with performance standards consistent with the OWTSs Rules, and for which a certification from RIDEM has been issued.

"Applicant" means the owner or owners of the property or easement that is the subject of the application, or the person who holds a valid purchase and sales agreement for said property.

"Area Subject to Storm Flowage" means drainage swales and channels which lead into, out of, pass through, or connect other watercourses, and which carry flows resulting from storm events but may remain relatively dry at other times.

"Bedrock" means rock, commonly called ledge, that forms the earth's crust. Bedrock includes rotten rock.

"Bedroom" means any room in a residential structure which is greater than seventy (70) square feet in area, which is susceptible to present or future use as a private sleeping area and which satisfies all of the following requirements:

- (1) Has at least one (1) window that meets the four point four (4.4) square foot minimum size and all other requirements of the "Rhode Island State Building Code SBC-1 or SBC-2";
- (2) Has at least one (1) interior method of entry and egress, excluding closets and bathrooms, allowing the room to be closed off from the remainder of the residence for privacy; and
- (3) Is a heated living space that is unrestricted for year-round use. Rooms located below grade that are not recognized as bedrooms by the "Rhode Island State Building Code SBC-1 or SBC-2" are not recognized as bedrooms under this ordinance.

"Blackwater" means liquid and solid human body waste and the carriage waters generated through toilet usage.

"Building Sewer" means the pipe that begins outside the building foundation wall and extends to the septic tank, the pipe that begins outside the building foundation wall and extends to the grease tank, the pipe from a grease tank to a septic tank, or the pipe carrying laundry wastes directly to a leachfield.

"Cesspool" means any buried chamber, including, but not limited to, any perforated metal tank, perforated concrete vault or covered hollow or excavation, which receives discharges of wastewater from a building sewer for the purpose of collecting solids and discharging liquids to the surrounding soil. As of December 31, 2005, the use of a cesspool is prohibited.

"Change of Use" means any change in use or occupancy of any structure or part thereof which would violate any provision of the Rhode Island State Building Code, G.L. 1956, ch. 23-27.3, as amended, or any regulation promulgated thereto without first obtaining a certificate of occupancy indicating that the structure complies with the provisions of the state building code for the proposed new use. Change of use shall also be held to mean a conversion of a seasonally used structure to a structure for year-round use.

"Coastal Shoreline Feature" means a part of the shore as categorized by the State of Rhode Island Coastal Resources Management Program using the following categories: coastal beaches; barrier islands and spits; coastal wetlands; coastal headlands, bluffs and cliffs; rocky shores; manmade shorelines; and dunes.

"Compost Toilet" means any self-contained toilet from which no liquid or solid waste materials are regularly discharged and from which a humus-like end product is produced. "Department" or "RIDEM" means the Rhode Island Department of Environmental Management.

"Director" means the Director of the Rhode Island Department of Environmental Management or any subordinate(s) to whom the Director has delegated the powers and duties vested in him/her pursuant to G.L. 1956, chs. 46-12 and 42-17.1, as amended, or any other duly authorized Agent.

"Dispersal Trench" means a shallow ditch with vertical sides, filled with stone, in which a single perforated distribution line or other suitable distribution device is laid and over which a cover of earth is placed.

"Distribution Box" means a watertight compartment that receives effluent and distributes it in approximately equal portions to two (2) or more distribution lines leading to some type of leachfield.

"Distribution Line" means the imperforated and perforated pipe or other suitable distribution device used to disperse effluent that extends from the distribution box. "Dosing" means the pumped or regulated flow of wastewater.

"Experimental Technology" means any OWTS technology that does not meet the location, design or construction requirements as provided by these Rules, but has been demonstrated in theory to meet the requirements of these Rules and may not be in use in Rhode Island or elsewhere as an approved technology for wastewater treatment.

"Failed OWTS" means any OWTS that does not adequately treat and disperse wastewater so as to create a public or private nuisance or threat to public health or environmental quality, as evidenced by, but not limited to, one or more of the following conditions:

- (1) Cesspools are not an approved method of wastewater disposal under the OWTSs Rules and this Ordinance. All existing cesspools are considered to be substandard wastewater treatment systems. As of December 31, 2005, the use of a cesspool is prohibited, and shall be considered a failed system.
- (2) Failure to accept wastewater into the building sewer;
- (3) Discharge of wastewater to a basement; subsurface drain; stormwater collection, conveyance, or treatment device; or watercourse unless expressly permitted by the Department;
- (4) Wastewater rising to the surface of the ground over or near any part of an OWTS or seeping from the absorption area at any change in grade, bank or road cut;
- (5) The invert of the inlet or the invert of the outlet for a septic tank, distribution box, or pump tank is submerged;
- (6) Pumping of the septic tank is required more than two (2) times per year;
- (7) OWTS is shown to have contaminated a drinking water well or watercourse;
- (8) If a septic tank, pump tank, or distribution box is pumped and groundwater seeps into it; or
- (9) Any deterioration, damage, or malfunction relating to any OWTS that would preclude adequate treatment and dispersal of wastewater.
- (10) Excessive solids are evident in the distribution box or distribution lines.

"Financial Surety" means a general obligation bond, revenue bond, performance bond, or any other type of financial guaranty, in fully marketable form, as evidence to the commitment of the construction of a sewer project.

"Floodplain" means that land area adjacent to a river or stream or other body of flowing water which is, on the average, likely to

be covered with flood waters resulting from a one hundred (100) year frequency storm. A one hundred (100) year frequency storm is one that is to be expected to be equaled or exceeded once in one hundred (100) years; or may be said to have a one percent (1%) probability of being equaled or exceeded in any given year. Rainfall intensity data for a one hundred (100) year frequency storm are those established for New England locations by the National Weather Service.

"Foundation Drain" means any mechanical or gravity drainage system, including all porous media installed to facilitate drainage, that lowers the groundwater elevation beneath a building foundation and which has an outlet for the collected groundwater.

"Freshwater Wetland" is defined as set forth in G.L. 1956, § 2-1-20(4), as amended, and as further defined by the Department's "Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act." The term shall further be held to include those wetland types defined by the remainder of G.L. 1956, § 2-1-20 and the wetland regulations, including, but not limited to: marshes, swamps, bogs, ponds, rivers, river and stream floodplains and banks, areas subject to flooding or stream water, including rivers and streams, and that area of land within fifty (50) feet of the edge of any bog, marsh, swamp or pond or that area within one hundred (100) feet of a flowing body of water less than ten (10) feet wide or that area within two hundred (200) feet of a flowing body of water greater than ten (10) feet in width.

"Graywater" means wastewater drained from sinks, tubs, showers, dishwashers, clothes washers,

and other non-toilet sources. "Groundwater Table" means the upper surface of the zone of saturation in an unconfined aquifer; includes a perched groundwater table.

"Holding Tank" means a closed watertight structure used to contain wastewater prior to being removed from the premises. A holding tank does not discharge wastewater to the surface of the ground or to the subsurface.

"Human Transported Material" means any materials, other than those emplaced pursuant to the OWTS Rules, including but not limited to artifacts, organic materials, soil, rock, or sediment moved horizontally by directed human activity.

"Invert" means the lowest portion of the interior of a pipe or fitting.

"Large Onsite Wastewater Treatment System" means an OWTS that meets any of the following:

- (1) Any single OWTS designed to treat five thousand (5,000) gallons or more per day;
- (2) Multiple OWTSs for any project on one or more parcels of land, excluding residential subdivisions, where the total design flow for the project is five thousand (5,000) gallons or more per day; or
- (3) All OWTSs serving more than one (1) unit in a residential subdivision, provided that the total design flow of these OWTSs, each serving more than one unit, is five thousand (5,000) gallons or more per day.

"Large Capacity Cesspool" means a cesspool that serves any non-residential facility that has the capacity to serve more than twenty (20) people per day or serves any multi-family residence or apartment building. As of December 31, 2005, the use of a large capacity cesspool is prohibited.

"Leachfield" means a group of one or more dispersal chambers or trenches designed for the final treatment and dispersal of wastewater into the underlying soil. The leachfield shall be held to mean the horizontal and vertical lines circumscribing the outermost edges including the area between the chambers or trenches and the depth to the bottom of stone.

"Linear Loading Rate" means the loading rate per linear foot of leachfield (gallons per day per linear foot) along the land's contour.

"Maintenance" means the regular cleaning of any concrete chamber, cesspool, septic tank, building sewer, distribution lines or any other component of an OWTS for the purpose of removing accumulated liquid, scum or sludge. The term, "maintenance," shall also be held to include regularly required servicing or replacement of any related mechanical, electrical, or other component equipment.

"Nitrogen reducing technology" means a wastewater treatment technology that is accepted by the Department as capable of reducing the total nitrogen concentrations by at least 50% and meeting an effluent concentration of less than or equal to 19 mg/l.

"Onsite Wastewater Treatment System (OWTS)" means any system of piping, tanks, dispersal areas, alternative toilets or other facilities designed to function as a unit to convey, store, treat or disperse wastewater by means other than discharge into a public sewer system.

"Original Ground" means those soils that have been deposited or developed by natural processes, excluding storm deposited sand in the backdune environment.

"Owner" means any person who holds legal title to any real property; or has possession or control of any real property through any agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of a holder of a legal title. Each such person is bound to comply with the provisions of these Rules.

"Person" means any individual, group of individuals, firm, corporation, association, partnership or any federal, state or municipal governmental entity.

"Private Drinking Water Well" means any manmade opening into the ground developed for the purpose of meeting a person's current potable drinking water needs provided said well does not supply a public water system. This definition shall include proposed private drinking water wells on an applicant's property and on other properties with an approved OWTS permit. Wells serving non-potable or non-drinking water needs are not considered private drinking water wells under either this Ordinance or the OWTS Rule. A well on a property that is served by a public water system is not considered a private drinking water well under the OWTSs Rule.

"Probe" means any exploratory test employing a driving rod, tool or other device to establish the depth of bedrock.

"Public Drinking Water Supply Well" or "Public Well" means any manmade opening into the ground developed for the purpose of meeting all or part of a public water system needs.

"Public Water System" means any water system that provides piped water to the public for human consumption, provided that such system has at least fifteen (15) service connections or serves an average of twenty-five (25) individuals daily at least sixty (60) days out of the year. A public water system shall include all sources and facilities involved in collecting, treating, storing and distributing the water.

"Pump Tank" means a watertight structure equipped with one or more pumps designed to discharge wastewater intermittently into a leachfield.

"Repair" means any work performed on an OWTS in order to mend or renovate a specific defect or deficiency after the failure, injury, deterioration or partial destruction of a previously existing OWTS or component thereof. A repair shall include any upgrade or modernize of an OWTS (e.g., replacement of cesspool). A repair shall not include any work performed on an existing OWTS that increases the flow capacity of the system.

"Residence" means any structure used for housing purposes, including, but not limited to, single or multiple family dwellings, duplexes, tenements, apartment buildings, residential condominiums, mobile homes, recreational vehicles or trailers.

"Restrictive Layer" means a soil horizon that is assigned to a soil category 10 as defined in Rule 15.11 of the OWTS Rules.

"Rotten Rock" means any decomposed but still coherent rock. Rotten Rock is greater than 50% coherent rock and lies above equal or more coherent rock.

"Seasonal High Groundwater Table" means the elevation of the groundwater table during that time of the year at which it is highest as determined by direct observation or by interpretation of hydromorphic features in the soil profile.

"Septage" means any solid, liquid or semi-solid removed from septic tanks, cesspools, privies, domestic wastewater holding tanks or other similar onsite wastewater treatment systems.

"Septic Tank" means a watertight receptacle which receives the discharge of wastewater from a building sewer, and is designed and constructed to permit the deposition of settled solids, the digestion of the matter deposited, and the discharge of the liquid

portion into the next treatment component or distribution box.

"Septic Tank Effluent Pipe" means the gravity-flow pipe that begins at the outlet of the septic tank or other treatment tank and extends to the next treatment component or distribution box.

"Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for use one time by one individual.

"Storm Drain" means any pipe or structure designed to collect, carry and divert surface water runoff.

"Structure" means any residence (as defined herein), building, garage, shack, trailer or other permanent or semi-permanent facility, whether commercial or non-commercial in use, which is proposed to be placed or has been built or otherwise placed on a parcel of real property.

"Subsurface Drains" means any system of below surface piping or highly permeable material intended to lower the groundwater table of an area, and which has an outlet to the surface for the collected groundwater.

"Test Hole" means any excavation in the proposed leachfield area to collect information on the soil profile, depth to a restrictive layer or bedrock, depth to seasonal high groundwater table or any other applicable field information.

"Tipping Distribution Box" means a type of distribution box where the effluent from the septic tank flows into a tipping pan, which when full, empties into the leachfield lines, thereby facilitating a more uniform distribution of effluent over the entire leach field.

"Tributary" means any flowing body of water or watercourse that provides intermittent or perennial flow to down-gradient watercourses that eventually discharge to the waters of concern (e.g., reservoir impoundment or salt pond).

"Tributary Wetland" means freshwater wetlands within a watershed that are connected via a watercourse to the waters of concern (e.g., drinking water supply impoundment or coastal wetland or tidal waters).

"Wastewater" means human or animal excremental liquid or substance, putrescible animal or vegetable matter or garbage and filth, including, but not limited to, water discharged from toilets, bath tubs, showers, laundry tubs, washing machines, sinks, and dishwashers. Both blackwater and graywater are considered wastewater under these Rules.

"Watercourse" means any river, stream, brook, pond, lake, swamp, marsh, bog, fen, wet meadow, area subject to storm flowage, or any other standing or flowing body of water, including such watercourses that may be affected by the tides.

"Wellhead Protection Area" means the area as designated by the Director in the RIDEM "Rules and Regulations for Groundwater Quality" surrounding a public well or wellfield through which water will move toward and reach such well or wellfield.

A. *Regulations.*

1. Given the findings in Subsection A above, in particular Block Island's SA water quality designation, the benefits and cost-effectiveness of enhanced wastewater treatment, and the fact that Block Island's groundwater and surface water are integrally connected with each other, the following shall apply:
 - a. It is the applicant's responsibility to ensure that the OWTS application to the Department is in compliance with this Ordinance regarding the location, design, construction and maintenance of an OWTS prior to submission to the Department. The OWTS application to the Department must be reviewed by the **Building Official** or his their designee and/or the Sewer Commission for compliance with this Ordinance prior to RIDEM initiating its review. Applicants must submit documentation to RIDEM on forms approved by RIDEM that the Town of New Shoreham has certified that the OWTS application is in compliance with this Ordinance.
 - b. The use of on-site wastewater treatment that meets or exceeds the design and performance standards in Subsections E and F of this Section shall be required for all new OWTS installations, OWTS alterations and major repairs, except as noted in Subsection C.
 - c. To help locate and facilitate the inspection, maintenance and pumping of a septic tank and ultimately to increase the longevity of the OWTS, all septic tanks installed, repaired or altered after the effective date of this Ordinance, shall be equipped with access risers to grade located at the inlet and outlet ends of the septic tank and an effluent filter located at the outlet end of the septic tank. These access risers shall be a minimum of twenty (20) inches in diameter. These items shall be installed in accordance with specifications available from the **Building Official** or his their designee and/or the Sewer Commission.
 - d. For all septic tanks installed after the effective date of this Ordinance, the manufacturer must provide a written warranty that the tank to be installed has been constructed and tested in accordance with the American Society for Testing and Materials (ASTM) standard C-1227-02. In addition, tanks must be tested on-site and a written guarantee provided by the installer that the tank is water-tight. The accepted procedure for site-testing tanks as water-tight shall be performed in accordance with Rule 26.11 of the OWTS Rules.
 - e. To help locate and facilitate the inspection and maintenance of a tipping distribution box and ultimately to increase the longevity of the OWTS, all tipping distribution boxes installed, repaired or altered after the effective date of this Ordinance, shall be equipped with an access riser brought to finished grade. The access riser shall be a minimum of ten (10) inch diameter. The access riser shall be installed in accordance with specifications available from the **Building Official** or his designee and/or the Sewer Commission.
2. Effluent Filters and Inspection Ports. To help locate and facilitate the inspection, maintenance and pumping of a septic tank and ultimately the longevity of the OWTS, all septic tanks installed prior to the effective date of this Ordinance shall, when determined technically feasible by the **Building Official** or his designee, be retrofitted with an effluent filter and access risers. The effluent filter shall be located at the outlet end of the septic tank and the access risers shall be located at grade at the inlet and outlet ends of the septic tank. These items shall be installed in accordance with the specifications available through the **Building Official** or his designee and/or the Sewer Commission.
 - a. To help locate and facilitate the inspection and maintenance of a tipping distribution box and ultimately the longevity of the OWTS, all tipping distribution boxes installed prior to the effective date of this Ordinance shall, when determined technically feasible by the **Building Official** or his designee, be retrofitted with an access riser. The access riser shall be installed in accordance with the specifications available through the **Building Official** or his designee and/or the Sewer Commission.
3. Cesspools. Cesspools are not an approved method of wastewater disposal under the OWTSs Rules and this Ordinance. All existing cesspools are considered to be substandard wastewater treatment systems. As of December 31, 2005, the use of a cesspool is prohibited, and shall be considered a failed system.
4. Deep concrete chambers (galleys), as described in Rule 34.4 of the OWTS Rule, are prohibited for OWTS Applications for New Building Construction and OWTS applications for Alterations to a Structure. Deep concrete chambers will not be permitted except for OWTS applications for Repair when no other type of leachfield can be utilized. The licensed designer must demonstrate that the repair alternatives to a deep concrete chamber are not feasible.
5. Alternative toilets, such as composting toilets, as described in Rule 36 of the OWTS Rules are prohibited, for use at a private dwelling, commercial facility, or any other structure; except, composting toilets may be permitted at a facility which is operated by the Town of New Shoreham, or a non-profit environmental, conservation, historical, or youth oriented organization when water is not regularly used at the facility.
6. All OWTS shall be maintained in accordance with the provisions of the Town of New Shoreham Wastewater Management Ordinance. Maintenance contracts shall be required on any system with mechanical components such as pumps, timers and alarms.
7. An OWTS shall be located on the same lot as the structure it serves, except when a system approved by the RIDEM is

(1) also approved in a Flexible Design Residential Development or Land Development Project where approved by the Planning Board as part of the utilities plan for the development; or (2) where a wastewater treatment system serving two (2) or more houses is proven necessary to remediate failed systems.)

8. When existing sewer lines are available and when connection to the sewers is in conformance with the Land Use and Facility Goals of the New Shoreham Comprehensive Plan, all new development shall be serviced by the municipal sewer system.

9. In order to ensure proper treatment of wastewater, an OWTS must be sized to handle the number of persons living in the house as calculated using RIDEM OWTS Rules and standards. This includes properties that are rented in excess of one (1) week per year.

10. Wherever lot size and configuration permit, there shall be maintained a one hundred fifty (150) foot setback from any new OWTS to any freshwater wetland as defined in Rule 7 of the OWTS Rules. The term wetland excludes from the definition, the land area within fifty (50) feet of any freshwater wetland, defined by RIDEM as the perimeter wetland and commonly referred to as the wetland buffer zone. Likewise, there shall be maintained a one hundred fifty (150) foot setback from any new OWTS to the inland edge of coastal feature of any salt marsh or other tidal wetland or waterbody.

11. Wherever lot size and configuration permit there shall be maintained a two hundred (200) foot setback from an OWTS to Sands Pond, Fresh Pond and Peckham Pond or any contiguous freshwater wetland (excluding from the definition, the land area within fifty (50) feet of any freshwater wetland, defined by RIDEM as the perimeter wetland and commonly referred to as the wetland buffer zone). These ponds are identified in the Town of New Shoreham's map of the "Water Supply Reservoir Watersheds" as delineated by RIDEM for the RI Geographical Information Systems.

12. Buffer and/or setback requirements, at a minimum, shall be those established by RIDEM or CRMC as applicable.

13. On those parcels where the setbacks required in 10 and 11 above would preclude the construction of the dwelling or other principal structure and associated OWTS, the licensed OWTS designer must prepare a "Cumulative Impact Assessment" of the deviations from this Ordinance and submit it to the **Building Official** along with the deviation request. The Cumulative Impact Assessment shall include, but not be limited to: a description of all abutting properties identifying the location of all OWTSs, surface waters, wetlands, and private or public drinking water wells, a concise description of all variances and/or deviations granted in the permitting of these abutting OWTSs and any additional information which the **Building Official** may deem appropriate. The Cumulative Impact Assessment shall include a certification by the licensed OWTS designer that the OWTS has been located as far as possible from the wetland. The **Building Official** may submit the Cumulative Impact Assessment for review and advisory opinion to the Conservation Commission, the RI On-Site Wastewater Training Center, RIDEM, Town Engineer or other experts as deemed necessary. If the **Building Official** or his designee believes that there are no alternative and less detrimental locations for the OWTS, he shall approve it. Even if the **Building Official** or his designee believes that there are alternative and less detrimental locations for the OWTS, even if it means changing the proposed location of the house or other principal structure, the plan shall be amended to accommodate those suggestions or the applicant shall seek relief through a Special Use Permit.

14. For all new OWTSs with a maximum daily flow over six hundred ninety (690) gallons or for subdivisions or land development projects where there is concern regarding the potential adverse impact of an OWTS on surface water and groundwater, the Zoning Board or Planning Board or Wastewater Management Inspector may require the applicant to submit an engineering report prepared by a professional engineer registered in the State of Rhode Island. The objective of the engineering report is to assess the potential impact of the proposed development on groundwater and surface water quality and to detail mitigative measures regarding the specific siting and design of an OWTS. The engineering report shall be required to demonstrate the capability of the proposed OWTS to accept and transmit effluent at the proposed application rate without failure or adverse effect to groundwater or surface water. Such analysis shall include the following:

- a. Complete site evaluation, including results of soil morphological analysis, of percolation tests, record of groundwater monitoring, and location of any water course, wetlands, and any existing or proposed private well or drain within 500 feet and any existing or proposed public well within 3000 feet of the proposed OWTS; and
- b. Hydrogeologic assessment of the disposal area considering potential of pollutant loading to groundwater below the OWTS; and
- c. Adequate scientific and technical evidence on how the proposed design will mitigate potential adverse impacts on the following:
 - (1) Public health;
 - (2) Any surface water; including the cumulative impacts of the system to the surrounding area;
 - (3) Groundwater;
 - (4) The ability of groundwater and surface water to support or maintain plant and wildlife as well as any designated water uses;

- (5) Public use and enjoyment of any recreational resource; and
- (6) Surrounding persons or property as potential cause of any public or private nuisance.

B. *Performance Standards.* All new OWTS installations, OWTS repairs and upgrades to an OWTS must conform to the following minimum performance standards. When necessary to further the purpose and intent of this Section, the Zoning Board of Review may require more stringent standards when granting a Special Use Permit.

1. All new OWTS installations, OWTS repairs and upgrades to an OWTS must conform, to OWTS Treatment Level 1 (T1) or to OWTS Treatment Level 2 (T2) standards, except as noted in Subsection c below.
 - a. *T1.* A conventional OWTS with the addition of a certified water-tight tank, an effluent filter at the outlet end of the septic tank, at finish grade access risers over the septic tank inlet and outlet. If a tipping distribution box is installed, the distribution box shall have a minimum ten (10) inch diameter access opening brought to finished grade.
 - b. *T2.* A level of OWTS that includes the improvements of T1 and reduced biochemical oxygen demand and total suspended solids, and removal of total nitrogen and/or fecal coliform as specified below:
 - (1) *T2N.* A type of T2 system that achieves a minimum total nitrogen removal of fifty percent (50%) or a reduction to 19 mg/l, and biochemical oxygen demand and total suspended solids each reduced to less than or equal to 30 mg/l; all as measured at the outlet of the treatment unit prior to discharge to a dispersal trench.
 - (2) *T2C.* A type of T2 system that reduces fecal coliform to less than or equal to 1,000 fecal coliform counts/100 ml and reduces biochemical oxygen demand and total suspended solids to less than or equal to 10 mg/l as measured at the outlet of the treatment unit prior to discharge to a dispersal trench.
 - c. *Shallow Dispersal Trenches.* In addition to the system improvements and wastewater specifications above, shallow dispersal trenches may be required on a case by case basis in T2 treatment areas, where the soil rating is high or extreme, where the system is in a wetland buffer or where other site constraints exist.
2. The required level of wastewater treatment shall be determined based on site-specific data using TABLE 1 and TABLE 2. TABLE 1 shall be used to assign a site vulnerability rating. TABLE 2 shall be used to assign an OWTS treatment level to a site (T1 or T2) by combining the vulnerability rating with the site's location in a given resource protection area.
 - a. When a site requires both T2N and T2C treatment levels, the OWTS designer shall, after consulting with the Town Wastewater Management Inspector, recommend either T2N or T2C as the more appropriate choice. This decision is to be approved by Town Wastewater Management Inspector or Building Official. Asof January 17, 2001, if a variance is still required for a T2C system, then the Wastewater Management Inspector shall authorize a T2N.
3. There shall be no net increase in off-site run-off.

Shallow dispersal trenches may be required in certain T2 areas where the soil rating is high or extreme, where the OWTS is in a wetland buffer or where other siteconstraints exist.

1. In Island Resource Areas, where T2 treatment levels are stipulated either T2C or T2N system may be required, based on specific site characteristics.
 2. All T2 systems in wetland buffers to critical resources shall meet either a T2N or T2C treatment as specified for the watershed or wellhead area in which they are located.
 3. Where the water table depth is 4-6 feet and soil is excessively permeable and no other constraint exists to result in High Site Vulnerability Rating, T1 treatment may be allowed.
 4. A T1 treatment system may be permitted where the wetlands is only associated with open ocean waters.
 5. A T1 treatment system may be permitted where the wetlands is only associated with open ocean waters.
- C. *Design Standards.* The following standards are designed to minimize soil compaction and vegetative disturbance, reduce run-off, maintain groundwater infiltration and ensure a high level of on-site wastewater treatment.

1. All OWTS must follow the design criteria for the treatment zone in which they are to be located. Acceptable technologies for OWTS Treatment Level 1 and Treatment Level 2 areas are on file with the Building Official or his designee and/or the Sewer Commission. This listing provides standards relative to the acceptability and suitability of various enhanced wastewater treatment technologies for various environmental conditions and geographical locations. It also provides criteria as to which subcategory of T1 or T2 treatment level shall be used. The Building Official or his designee and/or the Sewer Commission, in consultation with the Town Engineer, RIDEM and the Rhode Island On-Site Wastewater Training Center may periodically update this list to allow for advances in on-site wastewater technology.

- a. An associated map of OWTS Treatment Level Zones for New Shoreham indicates whether Treatment Level 1 or Treatment Level 2 is likely to be required. The map, on file with the Building Official or his designee and/or the Sewer Commission, is for planning purposes only and is not a substitute for site specific information. The final decision relative to the required level of treatment will be based on location within a given watershed and site specific soil and water table information.

2. Limit of construction and disturbance shall be designated on all plans and marked in the field with staked hay bales or silt fencing.
3. In coastal areas, buffer management and/or design shall, at a minimum, follow the Coastal Resource Management Council's technical regulations as per Section 150 of the RI Coastal Resource Management Plan, Adopted October 9, 2003.
4. To reduce the impacts of non-point source run-off and potential impacts to OWTS, driveways shall be constructed of permeable material. Run-off from all impermeable surfaces shall be discharged to grassed or wooded areas or landscaped retention areas for temporary storage and infiltration.

D. *Special Use Permit.*

1. The Zoning Board of Review may grant a Special Use Permit for the installation of an OWTS which cannot meet the regulations and standards of this Section 506.

2. Any new OWTS or OWTS alteration to be located in an OWTS Treatment Level 2 Area which has a water table less than or equal to two and one half feet (2'6") or an restrictive layer at less than or equal to four feet (4') shall obtain a Special Use Permit.

3. In order to obtain a Special Use Permit, the applicant must demonstrate to the Zoning Board's satisfaction, compliance with the criteria contained in Section 401(A)(1-9) -General Standards for Special-Use Permits, the performance and design standards located in sections E and F of this Subsection, and submit an engineering report as described in Section 14 of this Ordinance to address the following criteria:

- a. The design of the OWTS, associated buffer and building site in general shall minimize the problems and hazards associated with proximity to a critical resource area, excessively permeable soils, high water tables and impermeable or highly compacted soil. Such problems and hazards include, but are not limited to, surface break out of effluent, inadequately treated wastewater being discharged into the groundwater, contaminants such as viruses, bacteria and nutrients migrating above compacted layers or in the groundwater towards water supplies and sensitive surface waters.

- b. The system, once in use, will not pose a threat to the public health and safety nor cause any degradation of groundwater and/or surface water quality, including adverse effects due to cumulative impact.

- c. In order to obtain relief from Subsections D and E, the applicant must also demonstrate that complying with the requirements of these Subsections would render the construction of the requested permitted use impossible.

- d. The fact that the granting of a Special Use Permit would result in less expense to the applicant in implementing a

permitted use shall not be used by the Zoning Board as a justification for granting the permit.

E. **Technical Review.** The Town may forward plans and related information submitted pursuant to this Section for review and comment to the Town Engineer, the RI On- Site Wastewater Training Center, or other experts as deemed necessary.

F. **Severability.** If any provision of this ordinance or any rule or determination made hereunder, or application hereof to any person, agency, or circumstances is held invalid by a court of competent jurisdiction, the remainder of this ordinance and its application to any person, agency, or circumstance shall not be affected thereby. The invalidity of any section or sections of this ordinance shall not affect the validity of the remainder of this ordinance.

(Entire Section 506 was amended September 17, 2008)

(Ord. of 8-17-2011)

Section 508. - Wind Energy Conversion Systems (WECS).

A. **Purpose.** The purpose of this section is to provide for the development and use of wind power as an alternative energy source while protecting scenic values, protecting public safety, controlling noise levels, preventing electromagnetic interference, and interfacing effectively with the Island's electric utility. (Amended December 7, 2009)

B. **Jurisdiction.** WECS are allowed as follows: (Amended December 7, 2009)

1. As a permitted use in the RA Zone, RB Zone, RC Zone, RC/M Zone, M Zone, OHC Zone, NHC Zone and SC Zone, and as a permitted use only on Assessor's Plat 1 Lot 1-2 in the C Zone, provided all applicable location and general standards contained in this section are met. (Amended December 7, 2009)
2. As a Special Use Permit, under the provisions of subsection 508F below, in the RA Zone, RB Zone, RC Zone, RC/M Zone, M Zone, OHC Zone, NHC Zone, SC Zone whenever location and general standards as applicable cannot be met given the characteristics of the parcel in question. (Amended December 7, 2009)
3. As a Special Use Permit under the provisions of Section 508G below (utility-sized WECS) in the PU Zone, and as a Special Use Permit only on (that portion of) Assessor's Plat 2 Lot 48-1 and Lot 39 in the C Zone. (Amended December 7, 2009)

C. **Location Standards.**

1. If the closest property line to the proposed WECS is within two hundred twenty-five (225) feet, as measured from the central base of the proposed WECS, one (1) WECS is permitted on the lot with a height from the existing grade to the center of the blade of no more than thirty (30) feet each and with a blade diameter not exceeding nine (9) feet each. The total rated generating power of the system may not exceed 1 kW as per manufacturer's specifications.
2. If the closest property line to the proposed WECS is more than two hundred twenty-five (225) feet, as measured from the central base of the proposed WECS, a WECS is permitted on the lot with a height from the existing grade to the center of the blade of no more than forty-five (45) feet and with a blade diameter not exceeding fifteen (15) feet. The total rated generating power of the system may not exceed 3 kW as per manufacturer's specifications.
3. If the closest property line to the proposed WECS is more than three hundred (300) feet, as measured from the central base of the proposed WECS, a WECS is permitted on the lot with a height from the existing grade to the center of the blade of no more than sixty-two (62) feet each and with a blade diameter not exceeding twenty-five (25) feet each. The total rated generating power of the system may not exceed 10 kW as per manufacturer's specifications.

D. **General Standards.**

1. The applicant shall employ all reasonable means, including landscaping and alternative locations, to minimize the visual impact of all WECS components. All components of the WECS and its support structure shall be painted in plain muted colors (i.e. light gray-blue) without any graphics or other decoration.
2. The minimum tower setback from any abutting property line, or off-site above ground utility line, shall be a distance equal to the height of the tower from its base to the tip of a blade in the uppermost position, plus five (5) feet, or fifty (50) feet, whichever is greater.
3. The minimum distance from any guy wire to any property line shall be fifteen (15) feet.
4. If an application for a single proposed WECS includes a notarized letter, in a form acceptable to the **Building Official**, from any abutting property owner (all owners of a property must sign the letter) that abutting property may be included for the purpose of determining compliance with the Location Standards as well as the tower and guy wire setbacks and other standards for the siting of a WECS.
5. Where two (2) or more abutting property owners propose to share one (1) WECS, all of the property owners must sign the application and all of those properties may be included for the purpose of determining compliance with the Location

Standards as well as the tower and guy wire setbacks and other standards for the siting of a WECS.

6. The participating abutters in Subsections D(4) and D(5) above shall agree that they will record an instrument on the land evidence record, in a form to be provided by the Town Solicitor, which gives notice of the land's inclusion for the purpose of a WECS installation.

7. The levels of noise generated by any WECS, measured at any property line may not exceed the noise levels allowed under the New Shoreham Noise Ordinance. However, if base recordings done as referenced below exceed Town levels, the noise level is not to exceed 6 dBA above said base readings.

8. The tower, or other supporting structure, shall be made inaccessible to unauthorized personnel.

9. No WECS installation shall cause electromagnetic interference.

E. *Procedures.* The following procedures shall be followed in any application for a WECS:

1. Application for a WECS installation shall be made to the **Building Official** on a form to be provided to the applicant by the **Building Official**, and shall include proof of homeowner's insurance.

2. The application shall be prepared by a person or firm experienced in WECS installation, qualified to explain the installation, maintenance, safety and performance of the proposed WECS, including data with regard to noise levels and electromagnetic interference and provisions for year-round maintenance.

3. In addition to any other information the **Building Official** may require with an application, every application will include:

a. Structural design and installation drawings stamped by a registered professional engineer;

b. Manufacturer's documentation demonstrating compliance with the noise and electromagnetic interference requirements of this Ordinance;

c. A site plan indicating the location of the proposed WECS, distances to all property lines, existing and proposed structures, above ground utility lines and any other significant features or appurtenances;

(1) For any application, the **Building Official** may require that the site plan be prepared and stamped by a registered land surveyor or civil engineer if the distances are close to the Ordinance limits, difficult to verify or for other reasons the **Building Official** may determine that it is necessary.

d. Measurements of ambient noise at the property lines, prior to any WECS installation proposed. Said measurements shall include the date, time of day, weather and wind conditions present when taken.

4. After the WECS has been approved and installed, measurements will be performed by the **Building Official** of ambient and operating decibel levels at abutters' property lines to insure compliance with the provisions of the Ordinance which are to be maintained in the file for future reference. Said measurements shall be taken and recorded under similar conditions as were present when E(3)(d) were recorded.

5. Upon a complaint of excessive noise, ambient and operating decibel measurements shall be taken by the **Building Official** at the complainant's property line.

6. If the noise levels allowed under the Ordinance are exceeded, the **Building Official** shall cite the owner. The violation shall be deemed to be a public nuisance and must be corrected within thirty (30) days from the date of notification. If the noise violation is not remedied the WECS shall be removed or relocated or shall remain inactive until the noise violation is remedied.

7. The **Building Official** may direct the owner of any WECS to remove the installation, including all appurtenances thereto, if the facility is not fully maintained,

endangers neighboring property, or if it is abandoned. A WECS will be deemed to have been abandoned if it fails to generate power for one (1) year or more.

F. *Special Use Permit.*

1. The Zoning Board of Review may grant a Special Use Permit for the installation of a WECS which cannot meet the regulations and standards of this Section.
2. In order to obtain a Special Use Permit, the applicant must demonstrate to the Zoning Board's satisfaction, compliance with the General Standards for Special Use Permits.
3. The standards for noise and electromagnetic will be met by the proposal.
4. Any adverse effects of the proposal are outweighed by countervailing public benefits, after considering the following:
 - a. Acoustic impacts on other properties, given a wind turbine having the noise characteristics specified in the Ordinance, and having considered the following:
 - a. The wind exposure of the site;
 - b. The proximity of the turbine to existing or potential sensitive noise receptors off-site;
 - c. The acoustic buffering provided by intervening topography or buildings, and acoustic masking from trees or other elements that, like wind turbines, generate substantially increased noise under increased wind conditions;
 - d. Potential interference with positive elements of the sonic environment, such as that from coastal wave action;
 - e. Impacts on the visual environment as seen from other properties and from public roads, having considered the following:
 - (1) Visual prominence of the facility in light of its relationship to such things as topographic crests, sight lines from heavily traveled roads, or visually absorptive background landscape.
 - (2) The extent and nature of locations from which the facility would intrude into otherwise scenic views.
 - (3) Visual relationship to nearby elements that might provide visual impact buffering, or with which visual incongruity might be a likely result.
 - f. Contribution of the facility to reducing Island energy dependence on fossil fuels, either through the quantity of energy produced or through testing an approach, providing an exemplar, or being one element in a larger energy program.

G. *Utility Sized WECS.* The Town of New Shoreham is uniquely well suited for the production of electrical energy from utility sized wind turbines. It has abundant wind resources, the best in the State of Rhode Island, in addition to very high electricity rates principally due to the expense of importing diesel fuel to operate its power plant. The installation of commercial or utility wind energy conversion systems shall be allowed by Special Use Permit within the Public Utility Zone (see Section 321). For the purposes of this subsection, a utility wind turbine (See Section 202, Definitions) shall meet the following standards: (Added December 7, 2009)

1. A tower height which does not exceed fifty-five (55) meters (180 feet) and a total height, with blades in motion, which does not exceed eighty (80) meters, or two hundred and sixty-five (265) feet; (Added December 7, 2009)
2. A noise level which, under manufacturer's specifications, does not exceed 100 dBA at the hub, nor 45 dBA at a distance of 330 feet; and (Added December 7, 2009)
3. An exterior color which is non-reflective and designed to blend with the surrounding environment and minimal state-

of-the-art lighting. (Added December 7, 2009)(Section Amended May 23, 2001)

Section 509. - Rental Rooms.

A. *Standards.* Rental Rooms shall conform to the following:

1. Rental Rooms shall be within legally existing owner-occupied dwelling units.
2. No more than two (2) rooms may be rented.
3. An adequate sewage disposal system must be in place with proper documentation by RIDEM or by a certified ISDS designer or installer. Alternatively, the Sewer Commission shall certify that adequate sewer capacity has been allotted for the proposed use and that all fees and bills have been paid.
4. Dwelling units containing Rental Rooms shall contain an adequate escape route and a functioning smoke detector of a

type and location which complies with the R.I. Fire Safety Code.

5. No rooms may accommodate more than two (2) persons.
6. No rooms may be rented without a license from the Town. The term and fees for Rental Room licenses shall be set by the Town Council.

B. *Procedures.*

1. Before any license can be issued by the Town for any Rental Rooms, an application, including all necessary documentation, shall be made to the **Building Official**.
2. Within thirty (30) days of receipt of a completed application, following inspection by the Minimum Housing Inspector, if all the provisions of this section have been met, the **Building Official** shall issue a Certificate of Use and Occupancy for the Rental Rooms. If the provisions have not been fully satisfied or if the Minimum Housing Inspector has been unable to access the property, the application shall be rejected and the **Building Official** will send a written statement to the applicant detailing the reasons for rejection. When the reasons for denial have been corrected, the applicant may submit a new application at any time.
3. Fees for the Certificate of Use and Occupancy are payable at the time an application is made.
4. Any property owner, holding a Certificate of Use and Occupancy for rental rooms, may apply for a license to rent those rooms.
5. The Rental Room License shall be good for one year and may be renewed by application and payment of the appropriate fee. Dwelling units with Rental Rooms shall be subject to re-inspection by the Minimum Housing Inspector every year.
6. Rental of rooms without a valid Certificate of Use and Occupancy and License, as provided in this Ordinance,

shall constitute a violation of this Ordinance. (Section Amended August 16, 2000)

Section 512. - Outdoor Lighting.

A. *Purpose.* The residents of New Shoreham value the Town's rural qualities, including the ability to view the stars against a dark sky. Inappropriate and poorly designed or installed outdoor lighting causes unsafe and unpleasant conditions and limits their ability to enjoy nighttime sky. Good outdoor lighting at night benefits everyone. It increases safety, enhances the Town's nighttime character, and helps provide security. New lighting technologies have produced lights that are extremely powerful, and these types of lights may be improperly installed so that they create problems of excessive glare, light trespass, and higher energy use. Excessive glare can be annoying and may cause safety problems. Light trespass reduces everyone's privacy, and higher energy use results in increased costs for everyone. Appropriately regulated, and properly installed, outdoor lighting will contribute to the safety and welfare of the residents of the Town. It is intended to eliminate problems of glare, minimize light trespass, and help reduce the energy and financial costs of outdoor lighting, by establishing regulations which limit the area that certain kinds of outdoor-lighting fixtures can illuminate, and by limiting the total allowable illumination of properties in the Town. Luminaires on all properties, in all zoning districts, shall be installed with the idea of being a "good neighbor," with attempts to keep unnecessary direct light from shining onto abutting properties or streets.

B. *General.* All public and private outdoor lighting installed in the Town of New Shoreham shall be in conformance with the requirements established by this Ordinance.

C. *Control of Glare; Luminaire Design Factors.*

1. Any luminaire with a lamp or lamps rated at a total of more than 1800 lumens and all flood or spot luminaires with a lamp or lamps rated at a total of more than nine hundred (900) lumens shall not emit any direct light above a horizontal plane through the lowest direct light emitting part of the luminaire.
2. Any luminaire with a lamp or lamps rated at a total of more than 1800 lumens and all flood or spot luminaires with a lamp or lamps rated at a total of more than nine hundred (900) lumens shall be mounted at a height equal to or less than the value $3 + (D/3)$ where D is the distance in feet to the nearest property boundary. The maximum height of the luminaire may not exceed fifteen (15) feet. (See APPENDIX H)
3. Any luminaire used for the purpose of uplighting shall not exceed two hundred thirty-two (232) lumens.

D. *Exceptions.*

1. Any luminaire with a lamp or lamps rated at a total of 1800 lumens or less and all flood or spot luminaires with a lamp or lamps rated at nine hundred (900) lumens or less may be used without restriction to light distribution or mounting height except that if any spot or flood luminaire rated nine hundred (900) lumens or less is aimed, directed or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land or to create glare

perceptible to persons operating motor vehicles on public ways, the luminaire shall be redirected or its light output controlled as necessary to eliminate such conditions. (See APPENDIX G)

2. Luminaires used for public roadway illumination, installed on a public utility pole, may be installed at a maximum height of twenty-five (25) feet and may be positioned at that height up to the edge of any bordering property.

3. All temporary emergency lighting needed by the Police, the Fire Departments or other emergency services as well as all vehicular luminaires shall be exempt from the requirements of this Ordinance.

4. All hazard warning luminaires required by governmental regulatory agencies are exempt from the requirements of this ordinance except that all luminaires used must be shown to be as close as possible to the minimum lumen output required for the specific task.

5. Luminaires used primarily for sign illumination may be mounted at any height to a maximum of fifteen (15) feet regardless of lumen rating.

6. Seasonal holiday decoration lights.

E. *Temporary Outdoor Lighting.*

1. Any temporary outdoor lighting that conforms to the requirements of this Ordinance shall be allowed.

2. Nonconforming temporary outdoor lighting may be permitted by the Town Council by special temporary permit. The applicant shall submit a detailed description of the proposed temporary nonconforming lighting to the Council with the request. A failure of the Council to act on a request shall constitute a denial of the request. In granting any permit the Council shall consider:

- a. The public and/or private benefits which will result from the temporary lighting;
- b. Any annoyance or safety problems that may result from the use of the temporary lighting; and
- c. The duration of the temporary nonconforming lighting.

F. *Waterfront Lighting.* Outdoor lighting in, and around the ponds, lakes, harbors and other waters of the Town, shall not be installed or maintained so as to create a

hazard or nuisance to other property owners, navigation or boaters and shall comply with the following:

1. Lights on docks or piers shall be no more than three (3) feet above the docks or piers, shall be downward directed, and shall be no more than five hundred fifty (550) lumens or less.
2. Lights illuminating paths, stairs, decks, etc. shall not be directed toward the waters and shall be no more than 1800 lumens or less.
3. All exterior lighting shall be located, mounted and shielded so that direct illumination is not directed on the water surface more than twenty (20) feet from shore.

G. *Nonconforming Luminaires.*

1. All luminaires lawfully in place prior to the date of the adoption of this Section of the Zoning Ordinance shall be exempt from the provisions of this Ordinance for a period of five (5) years.
2. Disability Glare. Legal nonconforming luminaires that direct light toward streets, parking lots or the water, that cause disability glare to motorists, cyclists, pedestrians or boaters shall either be shielded or redirected within ninety (90) days of notification, so that the luminaires do not cause a potential hazard.
3. Any luminaire that replaces a legal nonconforming luminaire or any nonconforming luminaire that is moved must meet the standards of this Ordinance.

H. *Notification.*

1. Any building permit application and issued building permit shall include a copy of this Ordinance.
2. Within thirty (30) days of the enactment of this Ordinance the **Building Official** shall send a copy of the ordinance to all local electricians, general contractors and the local electric utility.
3. Failure to comply with sections 1 and 2 above, or to personally notify anyone, is not grounds to invalidate the provisions of this Ordinance. The notification provisions are intended to serve as a courtesy only to those notified.

(Section Added December 4, 2000)

Section 513. - Accessory Apartments.

A. *Purpose.* This Section is intended to provide year-round rental housing for year-round residents, seasonal rental housing for those deriving income from employment on the Island and at the same time provide supplemental income for homeowners from the rental of an accessory apartment, and to provide property tax incentives for accessory apartments to be voluntarily deed restricted for affordable housing. (Amended September 27, 2006)

B. *Affordable Accessory Apartments.* With respect to any accessory apartment that meets all the standards for accessory apartments set forth below, the following additional provisions shall apply (Section added September 27, 2006):

1. With respect to every assessment year for which said apartment is hereinafter duly deed restricted and utilized for affordable housing as defined in this Ordinance, the fair market value of said affordable accessory apartment shall not be included as real estate or improvements upon which real estate taxes are assessed and collected by the Town of New Shoreham provided that, at least thirty (30) days prior to said assessment year, the landowner shall have procured from the Block Island Housing Board and provided to the Tax Assessor documentation that the requirements of this Section have been met. The Block Island Housing Board shall adopt rules and regulations for the administration of the provisions of this Section, including but not limited to the form and content of the required deed restriction, and required language for long term monitoring and verification of eligibility. Once an affordable accessory apartment is deed restricted as provided herein, said restriction shall not thereafter be removed without a certificate being procured from the Block Island Housing Board and filed in the Records of Land Evidence of the Town of New Shoreham attesting that a withdrawal fee has been paid to the Tax Collector equal to ten (10) times the average annual real estate and improvement tax savings the subject property has received the benefit of under the provisions of this Section. This withdrawal fee may be waived in whole or in part for good cause shown by the Town Council on the recommendation of the Board of Tax Assessors. (Section added September 27, 2006)
2. All of the standards and requirements otherwise applicable to accessory apartments set forth below shall apply to affordable accessory apartments except that the requirement in Section 513D(3) that no accessory apartment shall be permitted if the result would be a residential density of more than two (2) dwelling units per lots may be modified as an affordable accessory apartment by Special Use Permit granted by the Zoning Board under Section 405: (i) the requirement in Section 513(D)3 that no accessory apartment shall be permitted if the result would be a residential density of more than two (2) dwelling units per lot; and (ii) the requirements of Section C(4) regarding accessory apartments in zoning districts without public sewers. (Section added September 27, 2006)

C. *General Standards.* The following standards shall apply to all accessory apartments except as provided above:

1. An accessory apartment can be included in any principal residential building, or in an accessory structure. (Amended June 19, 2002)
 2. The accessory apartment shall be self-contained with separate cooking and sanitary facilities for the exclusive use of the occupant(s) of the apartment. There shall be a maximum of two (2) bedrooms in any accessory apartment.
 3. In any zoning district where the public sewer services the structure in which the accessory apartment is to be located, an accessory apartment shall be permitted, without regard to the residential density requirements of the zoning district in which the lot is situated.
 4. In any zoning district where the public sewer does not service the structure in which the accessory apartment is to be located, an accessory apartment shall be permitted, without regard to the residential density requirements of the zoning district. (Amended September 27, 2006)
 5. In any zoning district where the public sewer does not service the structure in which the accessory apartment is to be located, an accessory apartment shall be permitted only after the ISDS has been inspected by the Wastewater Management Inspector, or his or her designee, and any necessary repair, modification, alteration or replacement of the ISDS has been made. (Amended June 19, 2002)
 6. For any lot on which an accessory apartment is located, all structures on the lot, and all areas of all structures on the lot shall be held in single, joint, common or otherwise undivided ownership. (Amended June 19, 2002)
 7. Any property owner maintaining any accessory apartment on the property shall rent that accessory apartment only by a written rental agreement which shall be kept by the owner and made available to the **Building Zoning Official** upon request.
 8. Any property owner maintaining any accessory apartment on the property agrees to the inspection of the property by the **Building Official and/or Minimum Housing Inspector Zoning Official** upon seventy-two (72) hours notice of the date, time and purpose of the inspection.
- D. *Standards for Residential Zones.* The following standards shall apply to accessory apartments located in the RA Zone, the RB Zone, the RC Zone, the RC/M Zone, and the M Zone.
1. The floor area of any one-bedroom accessory apartment shall not be less than three hundred (300) square feet of living area. The floor area of any two-bedroom accessory apartment shall not be less than three hundred forty (340) square feet of living area. No accessory apartment shall exceed a floor area of twelve hundred (1200) square feet of living area. (Amended June 19, 2002, August 21, 2006, and October 6, 2008)
 2. Modifications to the exterior of an existing principal structure resulting from the installation of an accessory apartment, or the design and construction of new homes with accessory apartments integrated into the design from the start, shall be consistent with the principal building's predominant character as a single-family home. Only one (1) main entrance will be permitted on the front or street side of the building. All other entrances shall be located at the side or rear of the building. The **Building Official** shall determine to what degree interior or exterior modifications shall be made to conform to the requirements of the state building code for life safety and fire separation. (Amended June 19, 2002)
 3. No accessory apartment shall be permitted if the result would be a residential density of more than two (2) dwelling units per lot.
 4. As a condition for the issuance and continued validity of an occupancy permit for an accessory apartment, the owner shall execute and record against the deed to said property a restriction, running with the land and in favor of the Town, to the effect that occupancy of the accessory apartment shall be limited to persons resident in the Town year-round (as defined in Chapter 2, Article I, Section 2-2 of the Revised Ordinances of the Town of New Shoreham) and that the accessory apartment may not be offered, nor used, for seasonal occupancy; and the owner shall file with the Town, prior to issuance of an occupancy permit and within thirty (30) days of any change in ownership of the premises, an affidavit, signed under the penalties of perjury by the owner of the premises, attesting to the fact that the accessory apartment is, and will be, limited to occupancy by persons resident in the Town year-round (as defined in Chapter 2, Article I, Section 2-2 of the Revised Ordinances of the Town of New Shoreham) and that the accessory apartment will not be offered, nor used, for seasonal occupancy. The affidavit shall be renewed by the owner of the premises every three (3) years as a condition for retaining an occupancy permit for the accessory apartment.
- (Amended September 27, 2006)
- E. *Standards for Commercial Zones.* The following standards shall apply to accessory apartments located in the SC Zone, the OHC Zone and the NHC Zone:
1. As a condition for the issuance, and continued validity, of an occupancy permit for any accessory apartment, the owner shall execute and record against the deed to said property a restriction, running with the land in favor of the Town, to the effect that occupancy of the accessory apartment shall be limited to persons resident in the Town year-round (as defined in Chapter 2, Article I, Section 2-2 of the Revised Ordinances of the Town of New Shoreham) or deriving income from employment on the Island and that the apartment may not be offered, nor used, for seasonal occupancy except for seasonal

occupancy by persons deriving income from employment on the Island; and the owner shall file with the Town, prior to issuance of an occupancy permit and within thirty (30) days of any change in ownership of the premises, an affidavit, signed under the penalties of perjury by the owner of the principal structure, attesting to the fact that the accessory apartment is, and will be, limited to occupancy by persons resident in the Town year-round (as defined in Chapter 2, Article I, Section 2-2 of the Revised Ordinances of the Town of New Shoreham) or deriving income from employment on the Island and that the accessory apartment will not be offered, nor used, for seasonal occupancy except for seasonal occupancy by persons deriving income from employment on the Island. The affidavit shall be renewed by the owner of the premises every three (3) years as a condition for retaining an occupancy permit for the accessory apartment.

2. A separate affidavit shall be required for each accessory apartment clearly identifying the apartment and distinguishing it from any other accessory apartments on the property.

(Amended September 27, 2006)

F. *Termination, Abandonment and Release.*

1. Any property owner with an accessory apartment may terminate the use and obtain a written release of the restrictions recorded under Section 513C(4) and/or Section 513D(2) by abandoning the use in accordance with the following procedure (Amended June 19, 2002):

a. The owner of the property shall send a written notice of the intention to abandon the accessory apartment use to the Zoning Official expressly abandoning the use, stating the use to which the apartment is to be changed and stating the date of the abandonment.

b. The owner shall convert the apartment from a dwelling unit to another use by, at a minimum, removing all cooking appliances and kitchen plumbing such that any reconversion to a dwelling unit will require a building permit.

c. On, or after, the date of abandonment the **Building Official** shall inspect the apartment and certify in writing that the apartment has been abandoned stating the date of the inspection, specifically what alterations were made by the owner in converting the apartment and to what use it has been converted. The **Building Official** shall insure that all alterations have been done according to code requirements.

d. Upon written recommendation by the Zoning Official to the Town Council the Town shall execute and deliver to the owner a written release and discharge of the recorded restrictions.

2. If any accessory apartment is not rented or occupied, in accordance with the terms of this Section, for a period in excess of one year, the accessory apartment use may be considered to have been abandoned. The **Building Official** and/or **Zoning Official** shall conduct an investigation, document his or her findings, and notify the property owner of his or her determination. In the Notice the **Building Official** and/or **Zoning Official** shall advise the property owner that a new application for a Special Use Permit will be required to reacquire the use. If no response is received the **Building Official** and/or **Zoning Official** shall record the Notice on the Land Evidence Records. Thereupon, the owner shall convert the apartment from a dwelling unit to another use by, at a minimum, removing all cooking appliances and kitchen plumbing such that any reconversion to a dwelling unit will require a building permit. This does not preclude the **Building Official** and/or **Zoning Official** from pursuing any other violation of the terms of this Section by someone, for example, renting the unit weekly at market rates. (Amended June 19, 2002) (Amended September 27, 2006)

Section 517. Solar Energy Systems. (Excerpts of amended 2021)

D. Applicability and Review Procedures:

1. Solar energy systems in all zoning districts as accessory uses subordinate to the principal use of the parcel.
2. Ground mounted solar energy systems, or solar canopies, with a total array size greater than 400 square feet may be allowed by special use permit. An application must be submitted to the Zoning Board of Review for a Special Use Permit under the provisions of Section 425. Any such application shall also be subject to Development Plan Review by the Planning Board under the provisions of Section 704.
3. Any SES proposed within the Historic Overlay District shall require review and approval by the Historic District Commission.
4. Solar energy systems must be consistent with all applicable State and Federal fire and electrical safety codes and shall obtain all necessary statewide solar, building, and electrical permits from the **Building Official** prior to commencement of construction.

H. Abandonment: Any abandoned solar energy system shall be removed within 180 days from the date of discontinued operations. Decommissioning shall consist of:

1. Physical removal and recycling of all solar energy system components.
2. Disposal of all solid and hazardous waste in accordance with all federal, state and local laws, regulations and ordinances.
3. Stabilization and re-vegetation of the site necessary to minimize erosion.

The **Building Official** shall be authorized to direct the removal of abandoned SES and all of its components. The property owner shall remove the system within ninety (90) days of said notice by the **Building Official**. If the owner or operator of an abandoned or

decommissioned SES fails to remove the SES in accordance with the provisions of this section, the Town of New Shoreham may enter the property and physically remove all components of the SES at the cost of the property owner.

Section 518. -- Accessory Family Dwelling Units. (amended 2018)

A. Purpose. The purpose of this section is to provide appropriate living accommodations for members of the property owner's family who are 62 years of age or older or who are disabled, or both.

B. General. An accessory family dwelling unit is permitted in all zoning districts and shall not be required to satisfy the dimensional standards for the zoning district in which it is located.

C. Standards. a. The accessory family dwelling unit must be connected to and accessible from the principal single-family dwelling unit. Accessory family dwelling units in accessory buildings are prohibited. b. The accessory family dwelling unit must be occupied by a family member of the owner of the principal dwelling unit. The family member must be 62 years old or older, or disabled as defined by R.I. Gen. Laws § 42-87-1. c. Before a building permit is issued for an accessory family dwelling unit, the property owner must submit to the **Building Official** a document from RIDEM certifying that OWTS serving the property will adequately accommodate the accessory family dwelling unit. If the property is served by municipal sewer, the Sewer Commission shall certify that adequate sewer capacity has been allocated to the property and that all fees and bills have been paid. d. Before the accessory family dwelling unit is occupied, the property owner must record a Declaration of Accessory Family Dwelling Unit in the land evidence records and must provide copies of the recorded document to the **Building Official and the Zoning Enforcement Officer**. The declaration must describe the restrictions imposed on the use by this section. e. The property shall be held in single, joint, common or otherwise undivided ownership. No condominiums are permitted. f. When the property is conveyed to a new owner or the occupants of the accessory family dwelling unit no longer reside in it, use of the living area as an accessory family dwelling unit is no longer permitted. The use may be resumed only by the recording of a new declaration of accessory family dwelling unit.

ARTICLE 6. - ADMINISTRATION

Section 602. - ~~Zoning Officer, Qualifications, Powers Administration, Enforcement and Duties.~~

~~A. — *Zoning Officer.* The Building Official shall serve as the Zoning Enforcement Officer and shall have the primary responsibility for administration and enforcement of this Ordinance and shall ensure that all construction on the Island conforms to this Ordinance and to all pertinent codes and regulations. The Building Official shall issue Certificates of Occupancy for buildings and structures only when they are complete and in full compliance therewith.~~

~~B. — *Minimum Qualifications.* The Zoning Officer shall be capable of performing the duties specified in this Ordinance and those other duties which may be assigned from time to time by the Town Council.~~

~~C. — *Duties.* As the Zoning Enforcement Officer, the Building Official shall have the following duties:~~

- ~~1. — The issuing of any required permits or certificates;~~
- ~~2. — Collection of required fees;~~
- ~~3. — Keeping of records showing the compliance of uses of land;~~
- ~~4. — Authorizing commencement of uses or development under the provisions of the zoning Ordinance;~~
- ~~5. — Inspection of suspected violations;~~
- ~~6. — Issuance of violation notices with required correction action;~~
- ~~7. — Collection of fines for violations;~~
- ~~8. — Ordering discontinuance of illegal uses of land, buildings, or structures;~~
- ~~9. — Ordering removal of illegal buildings or structures or illegal additions to structural alterations;~~
- ~~10. — Ordering discontinuance of illegal work;~~
- ~~11. — Initiating any other action authorized by this Ordinance to ensure compliance with or to prevent violations of this Ordinance. This shall include the withholding of Building Permits and Certificates of Occupancy where applicable and the issuance of stop orders where illegal and/or inappropriate actions are being carried out; and~~
- ~~12. — Performing such other duties and taking such actions as may be assigned by this Ordinance.~~

~~D. — *Zoning Certificate.* 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 the determination by the Zoning Officer. Such information, certificate or determination shall be provided within fifteen (15) days of the Zoning Officer's receipt of the written request. If 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.~~

A. Designation. A Zoning Official shall be designated by the Town Manager to assist in administration and enforcement of this Ordinance. They may be provided with the assistance of such other persons as the Town Manager may direct.

B. Duties

1. It shall be the duty of the Zoning Official to interpret and enforce the provisions of this Ordinance in the manner and form and with the powers provided in the laws of the State and in the Charter and Ordinances of the Town.

2. The Zoning Official shall refer all Applications for Variances, Special Use Permits and other Appeals to the Zoning Board of Review, and shall grant or deny Applications for Zoning Modifications.

3. In order to provide guidance or clarification, the Zoning Officer shall, upon written request, issue a Zoning Certificate or provide information to the requesting party as to the determination by the Zoning Officer. Such information, certificate or determination shall be provided within fifteen (15) days of the Zoning Officer's receipt of the written request. If 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. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may convey to the Zoning Official a complaint, which shall be in writing. The Official shall properly record such complaint, promptly investigate and take appropriate action thereon as provided by the Ordinance. All complainants shall be promptly notified by the Official as to the disposition of their complaint. The Official shall make a determination in writing, within fifteen (15) days, to any written complaint received, regarding a violation of this Ordinance. Any determination

of the Official may be appealed to the Zoning Board of Review.

5. If the Official shall find that any of the provisions of this Ordinance are being violated, they shall notify in writing the person responsible for such violation, indicate the nature of the violation and order the action necessary to correct it. They shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance or by State Law or by policies or procedures adopted by Town Council to ensure compliance with or to prevent violation of their provisions.

6. The Zoning Official shall perform such other duties and take such other actions as may be assigned by this Ordinance.

C. Conflicts of Law. All departments, officials and public employees of the Town which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance and shall issue no permit or license for any use, building or purpose if the same would be in conflict with the provisions of this Ordinance Any permit or license, issued in conflict with the provisions of this Ordinance, shall be null and void.

Section 603. - Zoning Board of Review. (amended 2018)

A. *General.*

1. The Board acts as a legally constituted quasi-judicial decision-making body and shall take no action except in accordance with state law.
2. The Zoning Board of Review shall be appointed by the Town Council and shall consist of five (5) regular members and two (2) auxiliary members.
3. If a vacancy occurs on the Board, for whatever reason at any time, the Town Council shall appoint a new member for the remainder of the unexpired term.
4. The Town Council may remove any regular or auxiliary member for cause, including excessive absenteeism, after written notice to the member and a hearing. The notice shall be sent by regular and certified mail to the members' last known mailing address.

B. *Powers and Duties.* The Zoning Board of Review shall:

1. 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 of the Town in the enforcement or interpretation of this Ordinance, or of any Ordinance adopted pursuant hereto;

C. *Decisions and Records.*

1. 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.
2. A written copy of the decision shall be filed in the office of the Zoning Board of Review within thirty (30) days of the date the decision was rendered, and shall be a public record. A decision granting a Variance or a Special Use Permit shall be recorded in the Land Evidence Records.
3. 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.
4. The Zoning Board of Review 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.
5. For any proceeding in which the right of appeal lies to the Superior or Supreme Court, the Zoning Board of Review shall either have the minutes taken by a competent court stenographer or record the meeting with a sound-recording device.
6. Within one business day of the day a written Zoning Board of Review decision is filed, a copy shall be mailed by any method that provides confirmation of receipt to the applicant and to any objector who has filed a written request for notification with the zoning enforcement officer. A copy shall also be delivered to the zoning enforcement officer. If the decision was recorded in the Land Evidence Records, a copy of the recorded decision shall be mailed.

ARTICLE 7. - PERMITS, PROCEDURES AND ENFORCEMENT

Section 701. - Building Permit/Zoning Certificate/Certificate of Occupancy.

- A. *Application.* Application for a building permit or zoning certificate shall be submitted by the owner of the property or the owner's agent on forms provided by the Building Official or Zoning Official, together with the pertinent application fee(s).
- B. *Submittal Requirements.* The application shall be accompanied by the following:

1. A site plan, drawn to scale, with sufficient clarity to show the lot boundaries, the location of any existing and proposed structures, all proposed or existing uses clearly identified, the distances from all lot lines, off-street parking, buffers and the nature of the work to be performed. The **Building Official or Zoning Official** shall also require any site plan to include the following, where relevant: (Amended Jan. 21, 2004 and Amended May 21, 2008)
 - a. Zoning lines and overlay districts; (Amended May 21, 2008)
 - b. Coastal features and wetlands; (Amended May 21, 2008)
 - c. Grade elevations on all sides of the structure and a determination of the average grade, for purposes of determining the building height. Two permanent benchmarks shall be installed on the property within 200 feet of the proposed building or structure by a Rhode Island Registered Land Surveyor prior to any human activity or land disturbance for the purpose of determining building or structure height as measured from the average natural grade. (See Section 202, Definitions, "Building Height," "Grade Average" and "Grade, Natural"); (Amended May 21, 2008) (note amended 2021)
 - d. Any other information deemed necessary to evaluate the permit or certificate request. The **Building Official or Zoning Official** may require any information on the site plan to be prepared and supplied by qualified professionals such as an engineer, surveyor, biologist or other appropriate professional; (Amended May 21, 2008)
 2. A certificate from the Department of Environmental Management stating that the water supply and sewage disposal facilities are satisfactory, or evidence of approvals and successful connection to municipal water supplies or sewer lines; and
 3. All approvals or variances granted by the Planning Board or the Zoning Board of Review as required by this Ordinance including any development plans, site plans, architectural plans, and/or engineering plans pertinent to such approvals.
- C. *Review and Disposition.* Within fifteen (15) days of receiving a complete application, the **Building Official and/or Zoning Official** shall determine whether the proposed development has received all approvals under and/or otherwise conforms to this Ordinance and any other pertinent law or regulation, and shall approve or deny the application accordingly, in writing. If the application is denied, the writing shall state the reasons for the denial and shall inform the applicant that the determination of the Building or Zoning Official may be appealed to the Zoning Board of Review, pursuant to Section 709, Appeals of this Ordinance.
- D. *Permit Placard.* A true copy of the permit placard issued with the building permit shall be kept on site and available for public inspection during the course of construction and until completion. A true copy of the permit placard issued with the zoning certificate/certificate of use shall be kept on site and available for inspection by the Zoning Official.
- E. *Permit Revocation/Expiration.*
1. *Revocation.* The **Building Official** shall revoke a building permit or zoning certificate if ~~he finds~~ they find that the permit application contained misrepresentations of fact or if the parameters of the permit are violated by work or any activity that does not conform to the approved plans for which the permit or certificate has been issued.
 2. *Expiration.* Any permit issued shall become invalid unless the work authorized by it shall have been commenced within six (6) months after its issuance, or if the work authorized by the permit is suspended or abandoned, for a period of six (6) months after the time the work is commenced.
 3. *Extension.* The **Building Official** may grant an extension, for a period not exceeding ninety (90) days, for cause. All extensions shall be in writing and signed by the **Building Official**.
- F. *Records.* The **Building Official's** office shall keep accurate records of all building permits issued, indicating plat/lot, new construction, additions or modifications, and building type. In addition, records are to be kept of all site visits with action taken and the time and issue date of all permits, certificates and stop orders. In the latter case, the **Building Official** shall record the conditions warranting a stop order by taking photographs and providing a written description of the nonconforming elements.
- G. *Certificate of Occupancy/Zoning Certificate.*
1. The **Building Official** shall issue a certificate of occupancy ~~and Zoning Official a~~ zoning certificate for any building, structure or land only if any use or construction thereon requiring a permit under this Section has been carried out in conformance with the requirements of such permit.
 2. The certificate of occupancy/zoning certificate shall state that the intended use, building, structure or lot conforms to the permit issued pursuant to this Section, and complies with or is legally nonconforming to the provisions of this Ordinance or is an authorized variance or modification therefrom.

Section 702. General Procedures.

- A. *Applicant's Participation Mandatory.* At any hearing of the Town Council or any board or commission before which an application is pending, the applicant or the applicant's agent must appear and stand ready to answer questions regarding the proposal submitted. Failure to be present may be grounds for dismissal of an application without prejudice.
- B. *Notice Requirements.* All notices of a public hearing shall contain the name of the owner of the subject property, the Assessor's Plat and Lot number(s) of the subject property, the address and/or a description of the location of the subject property,

and a description of the application upon which the Board is being asked to act. All costs of notification shall be borne by the applicant. Notification of a public hearing for a Variance or for a Special-Use Permit shall be as follows: (Amended May 2, 2001) (Amended August 20, 2014 by Ord. No. 2014-08)

1. The Zoning Board of Review (or the Planning Board in the case of a Development Plan Review application submitted pursuant Section 703, Subsection D 2) shall give public notice of the hearing, at least fourteen (14) days prior to the date of the hearing, in a newspaper of general circulation in the Town. (Amended August 20, 2014 by Ord. No. 2014-08)
2. Notice of the public hearing shall be sent to the applicant, all property owners within two hundred (200) feet of all boundaries of the subject property and the owner of the subject property. The notice shall be sent by first class mail, with a certificate of mailing from the United States Postal Service, not less than fourteen (14) days before the public hearing. The notices shall be mailed by the applicant. Proof of mailing shall be established by the applicant's filing, prior to the commencement of the public hearing, an affidavit of the mailing of the notice stating the date the notices were mailed and who mailed them. The affidavit shall have attached to it the certificates of mailing from the United States Postal Service. (Amended August 20, 2014 by Ord. No. 2014-08)
3. The applicant shall send notice of the public hearing, by first class mail, to the Associate Director of the RI Department of Administration, Division of Planning. (Amended August 20, 2014 by Ord. No. 2014-08)

C. *Submittal Requirements.*

1. Waiver of Requirement. Submittal Requirements for any application made under this Ordinance are the minimum requirements necessary for any application to be considered by the Town Council or any board or commission before which the application is pending. Any request to waive any submittal requirements shall be submitted in writing at the time the application is made, and shall include a statement of the reason for the request and of the relationship of that requirement to the application. Upon receipt of the application, the Town Council or the board or commission to which the application has been made shall consider any request to waive any Submittal Requirements. If the Town Council or the Board or Commission before which the application is pending determines that such requirement(s) may be waived, waivers shall be supported by specific findings and conclusions, which shall be contained in the record as the basis for granting such waiver(s). If any waiver is not granted, the application shall be returned to the applicant and no further consideration of the application shall occur until all requirements have been fully met.
2. Unless specifically indicated in the Submittal Requirements of a Section of this Ordinance, the applicant shall submit twelve (12) copies of each item required for application. Copies of each item required for application, including the plans, shall be submitted on standard-size (8½ x 11 or 11 x 17 inch) paper.

D. *Application After Denial.* An application for a Variance or Special-Use Permit, once denied by the Zoning Board of Review, cannot be submitted again absent a showing of a change of material circumstances in the time intervening between the two applications.

E. *Fees.* Fees for building and use permits, certificates of occupancy, and for all applications before the Town Council, the Planning Board, and the Zoning Board of Review shall be established by the Town Council and shall include, but not be limited to, the estimated cost of any publication and sending of notice. A schedule of fees shall be displayed in the Office of the Town Clerk.

F. *Pre-Application.* The Planning Staff or, in the absence of a Planning Staff, a Planning Board Committee appointed for this purpose, shall at the applicant's request, confer with the applicant prior to submission of the application to review the development proposal.

1. A pre-application 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 understand the steps to be taken to receive approval.
2. A pre-application conference is not required by the Town, but is recommended for all applications, particularly since the Planning Board and/or Planning Staff may submit written findings and recommendations on each application. The Town may, in fact, require that such a meeting take place for each application, if desired.
3. No determination made in the pre-application process shall be binding on any municipal boards and/or commission.

G. *Vested Rights.* Upon formal acceptance by the Zoning Board of Review of a complete and properly submitted application for development, that application shall be protected. Any application considered by the Town under the protection of this Section shall be reviewed according to the regulations applicable in the Zoning Ordinance in force at the time the Zoning Board of Review accepted the complete and properly submitted application.

H. *Conditional Approvals.* In granting a Variance or in making any determination upon which it is required to pass after a public hearing, the Zoning Board of Review may apply special conditions to that decision. These conditions may, in the opinion of the Board, be required to promote the intent and purposes of the Comprehensive Plan and the Zoning Ordinance. Failure to abide by any special conditions attached to a grant shall constitute a zoning violation. These special conditions shall be based on competent credible evidence on the record and shall be incorporated into the decision. Special conditions may include, but are not limited to, provisions for:

1. Minimizing adverse impact of the development upon other land, including the type, intensity, design, and performance of activities;
2. Controlling the sequence of development, including when it must be commenced and completed;
3. Controlling the duration of use or development and the time within which any temporary structure must be removed;
4. Assuring satisfactory installation and maintenance of required public improvements;
5. Designating the exact location and nature of development; and
6. Establishing detailed records by submission of drawings,

maps, plats or specifications. (Section Amended October 6, 2008)

Section 704. Development Plan Review.

A. *Purpose.* The purpose of Development Plan Review is to insure that designated categories of development are comprehensively reviewed in order that development impact may be evaluated in light of the Town's need to protect its natural, social, and cultural environment in accordance with the Comprehensive Plan and in order that adverse development impacts may be minimized.

B. *Development Plan Review Required.*

1. Any uses or facilities, requiring Development Plan Review under this Ordinance, other than permitted uses or facilities, shall be subject to development plan review conducted by the Planning Board prior to the hearing of the permitting authority. Such review shall be advisory to the permitting authority. If the permitting authority is required by this Ordinance, or by any other applicable provision of law, to conduct a public hearing on said application within a prescribed period of time, the permitting authority shall not close the public hearing and shall not act upon the application until such time as development plan review has been completed and a recommendation has been received from the Planning Board.
2. Requirements of Development Plan Review, as required under this Ordinance for permitted uses or facilities shall be mandatory and not advisory.

3. Development Plan Review is required for all uses requiring a Special Use Permit, except Special Use Permits associated with single-family residential development, provided however that such development is not considered a Secondary Dwelling Development under the provisions of Section 403, or meets any of the thresholds measuring building size and/or site disturbance within the RA and RB Zones under the provisions of Section 406, for which Development Plan Review is required. (Amended July 2, 2007) (Amended October 6, 2008)
4. Development Plan Review is required for the following uses in the RC/M Zone, M Zone, OHC Zone, NHC Zone and SC Zone:
 - a. All development involving a change in the use of a structure, other than a change of use to single-family residential use, where dimensional standards are more restrictive, or parking requirements are greater, than those of the prior use; (Amended July 6, 2009)
 - b. All new commercial uses of 2000 square feet or more of interior space or any new, increased or changed use involving a thirty percent (30%) increase in interior space, and/or; (Amended July 6, 2009)
 - c. Commercial/Residential Mixed Use under the provisions of Section 411 (allowed by Special Use Permit in the RC/M and M Zones and by right in the OHC, NHC and SC Zones). (Amended July 6, 2009)
5. For applications involving a change of use but no exterior construction or improvements, the Planning Board may waive Development Plan Review upon the following findings:
 - a. That the proposed use will not adversely affect existing drainage, pedestrian or vehicular circulation, relationship of buildings to each other, landscaping, buffering, lighting, or other considerations of Development Plan approval; and
 - b. That the existing facilities do not require upgraded or additional site improvements.
- C. *Submittal Requirements.* An application for Development Plan approval, in addition to any other relevant information the Planning Board may request, shall include the following, unless specifically exempted by the Planning Board:
 1. A list of the names and addresses of all property owners within two hundred (200) feet of all property lines of the subject property.
 2. A copy of all Variances, Modifications and/or Special Use Permit approvals attached to the property.
 3. All materials required in support of the Special Use Permit Application, if applicable. Submittal items waived by the Zoning Board may be required by the Planning Board if deemed necessary.
 4. Information regarding provisions for emergency access, as required at Section 501A.2.
 5. Materials indicating soil type and groundwater conditions, and documenting suitability as required at Section 501A.3.
 6. Drainage analysis documenting compliance with the requirements of Section 501A.4.
 7. Nutrient loading analysis, documenting compliance with the requirements of Section 501A.6.
 8. An erosion control plan, consistent with the requirements of Section 501A.7.
- D. *Procedure.* Development Plan Review shall be conducted by the Planning Board consistent with this Ordinance.
 1. *Pre-Application Meeting.* An applicant may request a pre-application meeting with the Planning Board, which may be held at any regular or special meeting of the Board or at any work session where the item has been legally posted. Pre-application meetings shall allow the applicant to meet with the Planning Board at an early stage in planning for comment on the proposal and advice as to the procedure to be followed. The purpose is to promote an early and mutual exchange of ideas and an understanding between the applicant and the Planning Board of what is, and can be, expected. Where appropriate and when timely requested Town officials, boards, commissions, staff and state agencies shall be notified and invited to attend and/or to provide comments.
 2. *Application.* All application materials must be received at least twenty-one (21) days prior to the regular meeting of the Planning Board in order for such hearing to be scheduled.
 3. *Waiver Request.* In the event that the applicant has requested a waiver of any submittal requirements in Subsection C above, the Planning Board shall review the application and make a ruling on the request for any waiver(s). If all requested waivers are granted, the Planning Board will schedule a public hearing for the next regular meeting. If any requested waiver is denied by the Planning Board, meaning the Planning Board has indicated that such material shall be required for application, the application may proceed only upon receipt of such material.
 4. *Public Hearing.* Upon submission of all required application materials to the Planning Board, including all Submittal Requirements in Subsection C above, and all necessary zoning approvals, the Planning Board shall schedule and hold a public hearing. Such hearing shall be noticed and advertised pursuant to Section 702B, Notice Requirements, except that notice may be sent by regular, First Class mail.
 - a. At the public hearing, opportunity shall be given to all interested persons to be heard on the proposal.
 - b. The public hearing may be kept open for up to three (3) months at the request of the Planning Board or the applicant

to receive additional information, or for revisions to the development plan to be made.

5. The Planning Board shall review the proposal in terms of the standards set forth in Section 501 Development Plan Review Standards, as well as the purposes and goals set forth in the Comprehensive Plan and this Ordinance.
 6. Within forty-five (45) days of the close of the public hearing, the Planning Board shall deliberate at a meeting open to the public, and shall approve, conditionally approve, or deny the Development Plan proposal. The objective of the Development Plan Review process is to develop a proposal which will meet or promote the goals and standards of the Comprehensive Plan and this Ordinance. Every effort shall be made to that end.
 7. Decisions of the Planning Board that are not advisory only may be appealed to the Zoning Board of Review pursuant to Section 709 – Appeals.
 8. *Project Review Prior to Issuance of Certificate of Occupancy.* Any project that has received a mandatory Development Plan Review approval from the Planning Board under the provisions of this section shall require review and approval of as-built plans or project improvements by the Town Technical Review Committee (TRC) established under the provisions of the Town of New Shoreham Subdivision Regulations, prior to the issuance of a certificate of occupancy (CO) by the **Building Official**. The TRC may refer such review to the full Planning Board for their determination if desired, or if required by the Board as a condition of approval of the development plans. The **Building Official** shall not issue the CO until the TRC and/or Planning Board have notified the **Building Official** in writing that all improvements and conditions required for approval of the development plans have been met. (Amended July 6, 2009)
- E. *Waiver of Development Plan Review.*
1. Applicants seeking a waiver of Development Plan Review, pursuant to Section 704B.2, shall submit a request to the Planning Board with sufficient supporting material to convince the Board that formal Review is not required. The Board may ask for any additional information from the requirements of Section 704C which it feels is necessary to decide on the request, including a site plan showing arrangement of the existing use and proposed use.
 2. The Planning Board may grant a waiver at any regular Planning Board meeting or at any other Planning Board meeting or work session at which at least four (4) Board members are present and notice of which has been duly posted.
 3. A waiver of Development Plan Review, if granted by the Planning Board, shall be binding on all Town officials, departments, boards and commissions, provided such official, department, board or commission has been notified and has submitted written comments on the application to the Planning Board prior to the granting of the waiver.

F. *Consolidation of Proceedings.* An applicant whose proposal requires both a Special Use Permit and Development Plan Review may request that the Planning Board's consideration of the Special Use Permit application for an advisory to the Zoning Board of Review, pursuant to Section 703D,2, and the Planning Board's Development Plan Review, take place at the same time. Such a request shall be made in writing at the time the application is made for the Special Use Permit. (Amended July 7, 1997) (Section amended in entirety April 6, 2015 by Ord. No. 2015-03)

Section 705. - Modification Permits.

A. *Purpose.* Modification Permits are intended to offer an administrative application and review process for deviations from the literal dimensional requirements of this Ordinance in the case of construction, alteration, or structural modification.

B. *Standards.*

1. A Modification may be granted pursuant to this Section, which allows a deviation of up to twenty-five percent (25%) from any yard requirements (front yard, side yard, rear yard) of any zoning district.
2. In no case, however, shall a Modification be granted which allows a yard depth which is not at least ten (10) feet.
3. A Modification shall not permit moving of any lot line.
4. A Modification may not be granted for a substandard lot of record which is also given a proportionate front, rear or side yard reduction under the provisions of Section 113E. (Amended October 21, 2009)

C. *Procedure.*

1. *Application.* The applicant shall submit two (2) copies of the application, including all plans, documentation and fees, to the **Building-Zoning Official**, in accordance with the provisions of Section 706(B), Submittal Requirements. (Amended October 21, 2009)
2. *Review.* Within ten (10) days of receipt of a complete application for a Modification, the **Building-Zoning Official** shall make a decision as to the suitability of the requested Modification based on the following determinations: (Amended October 21, 2009)
 - a. The Modification requested is reasonably necessary for the full enjoyment of the use;
 - b. If the Modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;
 - c. The Modification requested is in harmony with the purposes and intent of the Comprehensive Plan and Zoning Ordinance of the Town; and
 - d. The Modification requested does not require a variance of a flood hazard requirement.
3. *Suitability and Notice.* The **Building-Zoning Official** shall notify the applicant, by regular, First Class mail, as to the decision of suitability of the requested Modification(s) based on the above determinations. (Amended October 21, 2009)
 - a. If the Modification request is not deemed suitable based on the above determinations, the **Building-Zoning Official** shall indicate the reasons for such, and submit the application to the Zoning Board of Review as an application for a Variance pursuant to Section 706, Variance. (Amended October 21, 2009)
 - b. Upon an affirmative determination of the points in Subsection (C)(2) of this Section, the applicant to notify all property owners abutting the property which is the subject of the Modification request.
 - (1) Such notice shall include the name of the owner of record, and Assessor's Plat and Lot number(s) of the subject property.
 - (2) Such notice shall include a description of the location of the subject property.
 - (3) Such notice shall include a description of the Modification request which shall include the extent of modification requested and a description of the proposed structure, including its proposed use, which requires the Modification.
 - (4) Such notice shall be sent by certified mail, return receipt. Proof of mailing shall be established by the applicant's filing, within five (5) days of the commencement of the comment period, an affidavit of such notice, including an affidavit that both the owner of the subject property and the applicant have also received a copy of such notice, and the receipts of mailing and return receipts.
 - (5) Such notice shall indicate that the Modification will be granted unless written objection is received within thirty (30) days of the notice date.
 - (6) Such notice shall also be published in a newspaper of general circulation in the Town.

4. *Review and Disposition.*

a. If any written objection is received within thirty (30) days, the request for the Modification shall be denied. In that case, the application shall be referred to the Zoning Board of Review as a request for a Variance pursuant to Section 706, Variance, and may only be granted by the Zoning Board of Review.

b. If no written objections are received within thirty (30) days, the **Building-Zoning Official** shall grant the Modification request. In that case, the Modification Permit shall be issued to the applicant by certified mail, return receipt. (Amended October 21, 2009)

5. *Conditions.* The **Building-Zoning Official** may apply such special conditions to the Modification Permit as may, in the opinion of the **Building-Zoning Official**, be required to conform to the intent and purposes of this Ordinance. Appeals from such conditions imposed by the **Building-Zoning Official** may be made to the Zoning Board of Review pursuant to Section 709, Appeals. (Amended October 21, 2009)

D. *Records.* The **Building-Zoning Official** shall keep public records of all requests for Modifications, and of findings, determinations, special conditions, and any objections received. (Amended October 21, 2009)

E. *Costs.* All application fees and costs of notice shall be borne by the applicant requesting the Modification.

Section 707. - Enforcement.

A. *Violations of the Ordinance.* Any person who violates any of the provisions of this Ordinance or any condition or requirement of any action imposed by the Zoning Board of Review or any other agency pursuant to this Ordinance may be fined up to five hundred dollars (\$500) for each violation. The penalty for the violation shall reasonably relate to the severity of the offense. Each day the violation continues shall be deemed a separate offense.

1. *Notice of Violation.* Upon finding a violation, the **Building-Zoning Official** shall serve notice by personal service or by certified mail addressed to the premises or the person committing or permitting the violation, or on the owner of the property as shown on the latest copy of the Town assessment rolls, indicating the nature of the violation and ordering the action necessary to correct it.

2. *Compliance Time.* Such notice shall give a compliance date which the **Building-Zoning Official** shall establish based upon the length of time reasonably required to so comply, subject to the following:

a. The notice shall require compliance within no more than thirty (30) days. The **Building-Zoning Official** may not require compliance within less than ten (10) days, except as provided in this Section below.

b. Compliance may be ordered within twenty-four (24) hours of notice of violation if the **Building-Zoning Official** determines that the violation constitutes an immediate hazard to public health or safety.

c. Notice of the violation shall be posted in the Office of the Town Clerk and, upon failure to correct the violation by the compliance date, notice thereof shall be sent to the Chair~~man~~ of the Planning Board, the Chair~~man~~ of the Zoning Board of Review, and the Town Solicitor, and shall be recorded in the Land Evidence Records of the Town.

B. *Enforcement.* Upon notification of any violation of the Ordinance which has not been corrected by the compliance date, the Town Solicitor may initiate legal proceedings to restrain the violation of, or 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 Superior Court.

Section 708. - Amendments to the Ordinance. (note amended 2018)

A. *Recording the Decision.*

1. The Town Clerk shall cause the limitations and conditions so imposed to be clearly noted on the zoning map and recorded in the land evidence records. In the case of a conditional zone change, however, the limitations, restrictions, and conditions shall not be noted on the zoning map until the zone change has become effective. 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 set forth in Subsection C, Procedures, above, change the land to its original zoning use before the petition was filed. 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.
2. The Town Clerk shall also notify the **Building Official**, Zoning Official, Planning Staff and other Town boards and officials of the disposition of any application to amend this Ordinance.
3. Upon publication of the Zoning Ordinance and map(s), and any amendments thereto, the Town Clerk shall send a copy, without charge, to the Associate Director of the RI Department of Administration, Division of Planning, and to the RI State Law Library.

Section 711. - Demolition Review.

- A. *Purpose.* The purpose of these provisions is to provide a process for review of alternatives to demolition of buildings or structures that importantly contribute to the historic resources of New Shoreham, to create an incentive for the reuse of existing structures, and to reduce the quantity of demolition debris generated on the Island.
- B. *Applicability.* The Demolition Review provisions shall apply to all buildings and exterior elements thereof.
- C. *Procedure.*
 1. A permit may be issued by the **Building Official** for demolition of any building or structure to which these provisions apply only if he has determined, based upon his own examination and his review of evidence provided by the applicant and by any engineers or experts that the applicant may retain that:
 - a. The condition of the building or structure poses a serious and imminent threat to the public health and safety, and that there is no economically feasible alternative to the immediate demolition of the building or structure, or
 - b. Said building or structure is clearly devoid of reuse potential due to its existing condition or to physical barriers to moving the structure such as significant trees or topography, or
 - c. The demolition delay period set forth in Section 711(C)(5) below has expired.
 2. For these purposes, "demolition" includes razing, removing from the site, or substantial destruction through removal of a roof (but not re-roofing), removal of one or more sides of a building (but not re-siding), or other combination of actions resulting in removal of more than twenty-five (25%) of the structural exterior of a building or structure.
 3. Applicants for approval of demolition shall submit the following information to the **Building Official**:
 - a. A description of the proposed plans for demolition and the reason(s) therefore.
 - b. In the case of partial demolition involving additions or alterations, proposed plans and elevations for the affected portion of the building or structure.
 - c. In the case of complete razing or demolition, a description of efforts, if any, to implement an alternative to demolition, including any efforts to locate a purchaser of the building or structure who is willing to preserve, rehabilitate, or restore the building or structure.
 4. Within twenty (20) days of receipt of the required submittals the **Building Official** shall issue to the applicant a notice of determination regarding whether immediate demolition is necessary per Section 711(C)(1)(a) or whether the building or structure is clearly devoid of reuse potential per Section 711(C)(1)(b). If the **Building Official** determines that the demolition may then proceed or if more than the allowable time for his or her decision under Section 711(C)(4) elapses, a permit for demolition may be issued in accordance with applicable law.
 5. If the **Building Official** determines that immediate demolition is not required and that the structure has reuse potential a public notice shall be provided in a local newspaper at the expense of the applicant inviting letters of interest regarding the availability of a building or structure which is to be moved from the present location. Such notice shall include a description of the property and a way to contact the owner or owner's agent. Demolition may proceed if either:
 - a. Thirty (30) days elapse from the date of publication without receipt of one or more letters found by the **Building Official** to be bona fide expressions of interest; or
 - b. More than sixty (60) days elapse from the date of publication without a written agreement having been executed between the owner of the building or structure and a party seeking to acquire it for restoration or relocation.

D. *Interim Arrangements.* Where a written agreement has been executed as provided at Section 711(C)(5)(b) with security satisfactory to the Building Official assuring removal or, failing that, demolition of the building or structure, that building or structure may be temporarily relocated and may remain on the premises for up to six (6) months, during which period permitting and new construction may proceed on the premises without that building or structure being reflected in determinations made regarding zoning compliance. In such cases, no final certificate of occupancy shall be issued while the building proposed for removal or demolition remains on the site.

E. *Enforcement.* Demolition of a building or structure without first obtaining and complying fully with the determinations of the Building Official under Section 711 shall be subject to enforcement action as provided at Section 707, Enforcement. The period of violation shall begin as provided at Section 707(A)(2) and shall not end until restoration or compensatory provisions have been made to the satisfaction of the Building Official. Further, no building permit for new construction on the premises shall be issued for a period of two (2) years following the date of the unauthorized demolition."

Posted: April 6, 2022
Hearing: May 3, 2022
Adopted:
Posted:
Attest: Millicent McGinnes, MMC
Town Clerk