

TOWN OF CHERRYFIELD

LAND USE ORDINANCE

ENACTED AT THE ANNUAL TOWN MEETING

MARCH 12, 2007

REVISED AND APPROVED MARCH 10, 2008

MINOR WORDING CHANGES APRIL 2009

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Building and Land Use Ordinance of the Town of Cherryfield

Section 1. General

A. Title

This ordinance will be known and cited as the Land Use Ordinance of the Town of Cherryfield, Maine, and will be referred to herein as "this Ordinance."

B. Authority

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution, the provisions of Title 30-A, MRSA Section 3001 (Home Rule), and the State's Comprehensive Planning and Land Use Regulation Act, Title 30-A, MRSA, Sections 4312 *et seq.*

C. Purpose

The purpose of this Ordinance is to implement the Land Use provisions of the Comprehensive Plan of December 2003 as amended after State Planning Office review and adopted at Town Meeting, March 2003, the provisions therein being:

1. To protect and maintain the historic character of the Town.
2. To protect the socio/economic stability of the Town by creating a review process that will ensure that no project will create an unduly adverse impact on community values, services and facilities.
3. To give the people of the Town the opportunity to hear about and comment upon new uses of the land and the building thereon before such new uses occur.
4. To protect landowners in the Town from new uses of land or buildings that would make their own property less desirable.
5. To insure the orderly and beneficial development of the Town by designating general areas of appropriate location and size to accommodate anticipated growth and future development, these areas being: the Historic Village District (HV), a Mixed Use District (MU), a Future/Potential Industrial District (I) and a Rural District (R). This Ordinance is intended to encourage growth in the identified growth areas of the Town (HV, MU & I) and to limit growth in the Rural District (R). This Ordinance is further intended to attract, enhance and support existing and future development while minimizing negative impacts of non-compatible uses by identifying appropriate areas for commercial and industrial development thereby reducing the likelihood of future strip development and resistance to new projects.
6. To create commercial, home occupation and residential performance standards that will ensure compatibility within The Historic Village.

7. To promote the health, safety and general welfare of the residents of the community, including but not limited to traffic safety and safety from fire, flood and other elements.
8. To protect and conserve natural resources, including but not limited to aquifers and existing fish, waterfowl/wading bird habitats and deer wintering areas within the Town and those shared with neighboring towns.
9. To protect known and potential areas of archeological and historic significance.

To encourage the preservation of open space by requiring that major new residential developments provide recreational and open space areas in their plans.

D. Applicability

The provisions of this Ordinance shall govern all land and all structures within the boundaries of the Town of Cherryfield, exclusive of the land and water area subject to the Town's Shoreland Zoning Ordinance.

E. Conflicts with Other Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control. This Ordinance supersedes and replaces the Building Permit Ordinance of the Town of Cherryfield, which became effective on March 13, 1989 and the revisions of March 14, 1994, May 4, 1995, and March 10, 1997.

F. Validity and Severability

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

G. Effective Date

The effective date of this Ordinance shall be March 12, 2007.

H. Amendments

This Ordinance may be amended by majority vote of the Town Meeting of Cherryfield.

Section 2. Nonconformance

A. Purpose

It is the intent of these provisions to promote land use conformities, except that nonconforming conditions that legally existed before the effective date of this Ordinance or

any amendment thereto, shall be allowed to continue subject to the requirements set forth in this section.

B. General Requirements

- 1. Transfer of Ownership:** Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.
- 2. Repair and Maintenance:** This Ordinance allows, without a permit pursuant to this Ordinance, the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations which do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

C. Nonconforming Structures

- 1. Expansions:** A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure.
 - a. Foundations:** Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided: that the structure and new foundation are placed such that the setback and other dimensional requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Subsection 2, Relocation, below; that the completed foundation does not extend beyond the exterior existing dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three (3) additional feet.
 - b. Lot Lines:** No structure which is less than the required setback from a property line or the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the property line or the water body, tributary stream or wetland.
- 2. Relocation:** A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback or other dimensional requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

In determining whether the building relocation meets the setback or other dimensional requirements to the greatest practical extent, the Planning Board shall base its decision on the size of the lot, the slope of the land, the potential for soil erosion, the location of the critical natural resources, the septic system and other on-site soils suitable for septic

systems, and the type and amount of vegetation to be removed to accomplish the relocation.

3. **Reconstruction or Replacement:** Any nonconforming structure which is located less than the required setback from the normal high water line of a water body, tributary stream or upland edge of a wetland, or from the property line, or which otherwise fails to meet the dimensional requirements of this Ordinance, and which is removed, or damaged or destroyed by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction or removal and provided that such reconstruction or replacement is in compliance with the setback or other dimensional requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

Any nonconforming structure which is damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit from the Planning Board.

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

D. Nonconforming Uses

1. **Expansions:** Expansions of nonconforming uses are prohibited, except that nonconforming uses may, after obtaining a permit from the Planning Board, be expanded within residential structures legally existing as of the effective date of this Ordinance, or within expansions of such structures, or on the effective date of a subsequent amendment that causes such use to be nonconforming.
2. **Resumption Prohibited:** A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
3. **Change of Use:** An existing nonconforming use may be changed to another nonconforming use provided that the Planning Board finds after receiving a written application, that the proposed use is equally or more appropriate to the district than the existing nonconforming use, and that the proposed use will have no greater adverse impact on adjacent properties than the former use. The determination of appropriateness shall be based on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result

from such change of use. The performance standards of this Ordinance shall apply to such requests to establish new nonconforming uses.

E. Nonconforming Lots

- 1. Nonconforming Lots:** A vacant, nonconforming lot of record legally existing as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals. If more than one residential dwelling unit or other use is built, located or created on a nonconforming lot of record, the minimum lot size requirement of the District in which it is located shall be met for each residential dwelling unit and the frontage requirements of the District shall be met.
- 2. Contiguous Built Lots:** If two or more contiguous lots or parcels are in the same ownership of record at the time of adoption or amendment of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the lots meet the minimum square footage of the district in which they are located and provided further that all such lots meet the requirements of the State Subsurface Wastewater Disposal Rules.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold as a separate lot provided that the above referenced law and rules are complied with. When such lots are divided, each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

- 3. Contiguous Lots – Vacant or Partially Built:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

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

- a. Each lot contains at least 100 feet of road frontage and at least 20,000 square feet of lot area; or
- b. Any lots that do not meet the frontage and lot size requirements of subparagraph a. are reconfigured or combined such that each new lot contains at least 100 feet of road frontage and 20,000 square feet of lot area.

F. Vested Rights

Nonconforming use rights cannot arise by the mere filing of a notice of intent to build, an application for building permits, or an application for required State permits and approvals. Such rights usually arise when actual substantial construction has begun, or, in the case of pending applications, when the substantive review process to determine compliance with substantive performance standards on a complete application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both State and local.

Section 3. Land Use District Requirements

A. Purpose

The purpose of these district requirements is to implement the Town's Comprehensive Plan and to provide for orderly growth and development.

B. Boundaries

The location and boundaries of the land use districts are established as shown on the "Town of Cherryfield Land Use Map," entitled "Official Land Use Map of Cherryfield, Maine", dated March 12, 2007, and on file in the office of the Town Clerk. The Official Land Use Map is hereby made part of and incorporated into this Ordinance.

Unless otherwise set forth on the Official Land Use Map, district boundary lines are tax map lines, property lines, the center lines of roads, streets, and rights of way. Boundaries indicated as being parallel to or extensions of features listed above shall be so construed. Distances not specifically indicated on the Official Land Use Map shall be determined by the scale of the Map. Where uncertainty exists as to the exact location of the district boundary lines, the Board of Appeals shall be the final authority as to location.

Exclusive of the 250-foot Shoreland Zone, where a Land Use District Boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended not more than 30 feet into the more restricted portion of the lot.

A copy of the Official Land Use Map of Cherryfield is attached (As revised and approved at Cherryfield Town Meeting, March 10, 2008)

C. Land Use Districts

1. **The Historic Village (HV)** – This Ordinance hereby establishes an area within the Mixed Use District to be known as The Historic Village. The purpose of establishing The Historic Village is to protect that part of the Town of Cherryfield identified by the Maine Historic Preservation Commission in 1990 as the Cherryfield Historic District, an area of approximately 75 acres lying on both sides of the Narraguagus River and comprised of a collection of 52 contributing and substantially intact residential and commercial buildings that clearly depict the nineteenth century development of a

riverside community. The location and boundaries of The Historic Village are established as shown on the "Official Town of Cherryfield Land Use Map," which is incorporated herein by reference and made a part of this Ordinance.

2. **The Mixed Use District (MU)** – This Ordinance hereby establishes an area called the Mixed Use District, the location and boundaries of which are established as shown on the "Official Town of Cherryfield Land Use Map," and are part of this Ordinance. The purpose of the Mixed Use District is to encourage efficient land development patterns and to provide for anticipated growth and development by allowing a range of residential and compatible commercial uses within a concentrated area consistent with the concept of a downtown thereby discouraging sprawl, preserving open spaces and facilitating the delivery of town services.
3. **The Future Industrial District (I)** – This Ordinance hereby establishes an area called the Future Industrial District, the location and floating boundaries of which are sited on the "Official Town of Cherryfield Land Use Map" and are part of this Ordinance. The purpose of the Industrial District is to provide one area in which it would be considered appropriate to site industrial, manufacturing and commercial activity not compatible with a residential area. Criteria for the development of this district are established in the Comprehensive Plan and will include a well defined boundary with two or fewer access points on to Rt. 193, will be on the east side of Rt. 193, will be closely tied to regional transportation enhancements, and boundaries and uses will be identified through board consultation with members of the public, any existing Economic Development Committees of the Town, biologists with LURC and Inland Fish and Wildlife (or their successor agencies) and Maine Department of Transportation.
4. **The Rural District (R)** - This Ordinance hereby establishes an area called the Rural District, the location and boundaries of which are established as shown on the "Official Town of Cherryfield Land Use Map," and are part of this Ordinance. The purpose of the Rural District is to provide protection to rural resources from incompatible development by restricting the nature and extent of development in the Rural District.

D. Land Uses

Land uses permitted in the Historic Village, the Mixed Use District, the Industrial District and the Rural District, in conformance with the performance standards of this Ordinance, are shown in the following tables.

Key:	Y	=	Yes, permitted without a permit
	BP	=	Permitted with building permit only
	SPR	=	Permitted, subject to site plan review and the issuance of a building permit
	N	=	No, not permitted

Table of Land Uses				
Residential Use/Structure	Historic Village	Mixed Use	Industrial	Rural
Accessory Structure less than 100 sq. ft.	Y	Y	Y	Y
Accessory Structure more than 100 sq. ft.	BP	BP	BP	BP
Change of Use	SPR	SPR	SPR	SPR
Single-Family Dwelling	BP	BP	BP	BP
Mobile Home	N	BP	BP	BP
Duplex	BP	BP	BP	BP
Multi-Family Dwelling	SPR	SPR	SPR	N
Home Occupation	SPR	SPR	SPR	SPR
Manufactured Housing*	BP	BP	BP	BP
Mobile Home Park	N	SPR	SPR	N
Congregate Housing	N	SPR	N	N
Subdivision**	SPR	SPR	SPR	SPR
Residential Back Lot Development	BP	BP	BP	BP

*Manufactured Housing within the Historic Village shall be restricted to buildings compatible in style with those historic buildings found within the Historic District.

**See Subdivision Ordinance

Commercial Use/Structure	Historic Village	Mixed Use	Industrial	Rural
Accessory Structure	SPR	SPR	SPR	SPR
Change of Use	SPR	SPR	SPR	SPR
Amusement Facility, Comm. Recreation	SPR	SPR	SPR	SPR
Automobile Graveyard/Junkyard	N	N	SPR	N
Automobile Repair and/or Sales	N	SPR	SPR	SPR
Bed & Breakfast	SPR	SPR	SPR	SPR
Boarding/Lodging	SPR	SPR	SPR	SPR
Boat Building/Repair	N	SPR	SPR	SPR
Building Materials, Retail Sales	N	SPR	SPR	SPR
Commercial School	SPR	SPR	SPR	N
Firewood Processing	N	SPR	SPR	SPR
Fisheries, Processing/Storage	N	SPR	SPR	SPR
Gasoline Service Station	SPR	SPR	SPR	N
Hotel/Motel	SPR	SPR	SPR	N
Indoor Theatre	N	SPR	SPR	SPR
Kennel/Stable/Veterinary Hospital	N	SPR	SPR	SPR
Convenience Store	SPR	SPR	SPR	N

Table of Land Uses, cont'd				
Off-street Parking/Loading Facilities	N	SPR	SPR	N
Offices, Business/Professional	SPR	SPR	SPR	N
Publishing/Printing	SPR	SPR	SPR	SPR
Tele-Communications Towers	N	SPR	SPR	SPR
Restaurant	SPR	SPR	SPR	SPR
Retail Business	SPR	SPR	SPR	SPR
Service Business	SPR	SPR	SPR	SPR
Shopping Center	N	SPR	SPR	N
Well Drilling –High Volume Commercial	N	SPR	SPR	SPR
Wholesale Business	N	SPR	SPR	SPR
Industrial Use/Structure				
Accessory Structure	SPR	SPP	SPP	SPR
Change of Use	SPR	SPR	SPR	SPR
Airport/Air Transportation Dependent Use	N	SPR	SPR	N
Bulk Oil/Gas Terminal	N	SPR	SPR	N
Demolition/Waste Disposal	N	N	SPR	SPR
Recycling Operation	N	SPR	SPR	SPR
Sawmill	N	SPR	SPR	SPR
Transportation/Communications Facility	N	SPR	SPR	N
Trucking/Distribution Terminal	N	SPR	SPR	N
Warehousing/Storage Buildings	N	SPR	SPR	SPR
Education, Institutional, Public Use/Structure				
Accessory Structure	SPR	SPR	SPR	SPR
Change of Use	SPR	SPR	SPR	SPR
Church/Synagogue/Mosque/Parish House	SPR	SPR	SPR	N
Civic/Convention Center	N	SPR	SPR	N
Community Center/Club	SPR	SPR	SPR	SPR
Day Care	SPR	SPR	SPR	N
Essential Services	Y	Y	Y	Y
Fire/Police Stations	N	SPR	SPR	N
Government Office	SPR	SPR	SPR	N
Group Home/Hospice/Nursing Home	SPR	SPR	SPR	N
Hospital/Medical Treatment Facilities	N	SPR	SPR	N
General Pharmacy	SPR	SPR	N	N
Sole-Source Pharmacy/Drug Dispensary	N	SPR	SPR	SPR
Museum/Library	SPR	SPR	SPR	N
Public/Private School	SPR	SPR	SPR	SPR
Public Utility Facility	N	SPR	SPR	SPR
Outdoor/Resource-based Use/Structure	Historic Village	Mixed Use	Industrial	Rural
Accessory Structure	SPR	SPR	SPR	SPR
Change of Use	SPR	SPR	SPR	SPR
Agriculture	Y	Y	Y	Y
Animal Breeding or Care	N	SPR	BP	BP
Campground	N	SPR	SPR	SPR
Cemetery	SPR	SPR	SPR	SPR
Extractive Industry	N	N	SPR	SPR

Table of Land Uses, cont'd				
Outdoor/Resource-based Use/Structure	Historic Village	Mixed Use	Industrial	Rural
Farm Stand-larger than 100 sq ft	SPR	BP	BP	BP
Forestry	N	Y	Y	Y
Golf Course (excluding miniature golf)	N	SPR	SPR	SPR
Parks and Recreation	Y	Y	Y	Y
Noncommercial Recreational Uses:	Y	Y	Y	Y
Primitive recreation uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, canoe portaging, cross country skiing and snowshoeing				

E. Dimensional Requirements

Lots in the Historic Village, Mixed Use, Industrial and Rural Districts shall meet or exceed the following minimum requirements (additional area may be required by other provisions of this Ordinance).

Table of Land Dimensions				
Dimensions	Historic Village	Mixed Use	Industrial	Rural
Minimum land area per dwelling unit in square feet	20,000	20,000	20,000	40,000
Minimum frontage (feet) Town or State owned roads	50	75	200	200
Minimum Setbacks (feet)				
Front setback (feet)	25	25	100	25
Side setback (feet)	10	15	50	15
Rear setback (feet)	15	15	25	50
Maximum lot coverage (%)	50%	50%	75%	50%
Height Limits (feet)	50	50	50	50

F. Notes to Table

1. Lot Size Determination

All lots created for sale to the Public, or for residential or commercial development, after the effective date of this Ordinance, shall comply with the minimum lot size requirements for each of the districts specified herein (refer to table above, and to Future Land Use Map following this ordinance).

Land below the maximum high water line of a water body, tributary stream, or upland edge of a wetland shall not be included when calculating minimum lot size.

2. Multiple Structures

If more than one principal building is constructed on a single parcel of land, the "minimum land area per dwelling" requirement shall apply, and all structures shall meet the front, side, and rear setback requirements. If more than one non-residential structure is constructed on a lot, the minimum land area per dwelling requirement shall be met for each additional structure, even if such structures are connected.

3. Required Frontage

See Table or Land Use Dimensions.

4. Cul-de-Sac Frontage

New building lots located at the end of cul-de-sacs or along curves in a street where the radius of the curve at the front lot line is less than 90 feet, may be designed so that they have a minimum of 35 feet of street frontage along the front lot line, so long as lot width at the location where the principal building is to be constructed is at least equal to the distance normally required for street frontage in that district. The lot width shall be measured along a line that is parallel to a tangent of the mid-point of the curve.

5. Setback Measurements

The front setback along a public road shall be measured from the edge of the right-of-way line to the nearest part of the building. All side and rear setbacks shall be measured from the property line to the nearest part of the building.

6. Side Setbacks

The minimum side setback may be reduced by two-thirds for nonconforming lots of record which were created and built upon prior to the effective date of this Ordinance.

7. Driveways, Parking Areas

Driveways and parking areas may be located within any required setback area provided that they shall not be located within fifteen (15) feet of the side or rear lot lines, unless a written agreement is signed by the abutters. Off street parking will be provided in accordance with the following standards: Dwellings – at least 2 spaces per unit; Hotels, Motels, Boarding Houses – 1 space per guest room; Restaurants, Clubs, Recreation facilities - 1 space per 4 seats; Stores and Offices – 1 space per each 300 square feet of floor area. In addition, all commercial buildings will be required to provide 1 parking space for each full-time employee; Buildings not listed – spaces shall be provided as for the most similar building which is listed.

8. Accessory Structures

When located beyond the rear of the principal building, accessory buildings no larger than 150 square feet in floor area may be located within the required side or rear setbacks provided that no structure shall be located within six (6) feet from a side or rear lot line.

9. Height of Structures

All principal and accessory structures shall not exceed fifty (50) feet in height. All expansions that increase the footprint of an existing structure shall not exceed fifty feet in height. The height of a structure shall be determined by using the vertical distance, as measured from halfway between the mean original grade at the downhill side of the structure and the mean original grade at the uphill side of the structure to the highest point of the structure, excluding chimneys, steeples, antennas, and cupolas.

This subsection does NOT apply to structures having no floor area, such as transmission towers, wind turbines, communication antennas and similar structures.

10. Corner Lots

The front setback requirement shall be observed along all roads abutting the lot.

11. Corner Lot Obstructions

All corner lots shall be kept free from visual obstruction for a distance of twenty-five (25) feet measured along the street lines.

12. Structures on Abutting Lots

Where a proposed structure would be abutted on both sides by existing structures, either on the same lot or adjoining lots, whose front setbacks are less than the required setback, the setback of the proposed structure may be reduced to that of the structure with the greatest front setback.

Section 4. Performance Standards

A. General Standards

1. Land Use Requirements

Except as hereinafter specified, no structure or land shall hereafter be used or occupied, and no structure or part thereof shall be erected, constructed, expanded, moved, altered, replaced, and no new lot shall be created except in conformity with all the regulations herein specified for the Town district in which it is located, unless a variance is granted by the Board of Appeals. Penalties can be assessed by the Code Enforcement Officer for violations of this Ordinance's provisions (see pg. 35)

2. Access to Property – Public or Private Road Access

Each property shall be provided with a right-of –way provided by a permanent, recorded easement.

3. Entrances to Roads and Streets

A Cherryfield Entry Permit is required from the Road Commissioner prior to establishing an entry to a town-maintained road or street, except in cases where a State Entry Permit is required for State Roads. The following are minimum standards for new or replacement driveway entrances:

- a. The culvert shall be supplied and installed by the applicant. A new culvert is preferred, but used is permissible if authorized by the Road Commissioner.
- b. Culvert diameter: minimum of 15 inches (12 inches if there is ledge, although with smaller size, freezing is a strong concern). Final size is determined by the amount of runoff in a given location.
- c. Length: minimum of 20 feet with a preference for 30 feet to prevent collapsing of the ends. A maximum length of 50 feet is allowed.
- d. Materials: Aluminum Clad Corrugated Metal Pipe or plastic corrugated pipe is permitted. Plastic (HDPE) corrugated pipe must meet or exceed AASHTO specification M294. For 24-inch and larger diameters, 14-gauge material is required. Below 24 inches, 16-gauge is required. The use of bituminous-coated corrugated metal pipe is prohibited.
- e. Design Standards: Where the driveway is pitched upward from the road, the shoulder grade should be maintained as far as practical. The objective is to prevent water flowing down the driveway and onto the road where icing is a problem in winter. Where maintaining shoulder grade is not practical, some other means of diverting water flow must be provided. Where the driveway is pitched upward or downward from the roadway, the driveway must be engineered so that a vehicle can come to a full stop before entering the roadway. This is to insure safety in bad weather conditions.
- f. The driveway will be located so as to provide the greatest length of unobstructed sight line in both directions for the driver entering the roadway.
- g. Each lot shall be provided with a driveway at least 10 feet in width. The edge of all driveways must be set back fifteen feet from side and rear lot lines. Driveway setbacks may be less than fifteen feet with the written agreement of all landowners abutting the proposed driveway.

4. Buffer Strips

The purpose of buffer strips is to separate and partially obstruct the view of one or more land uses or properties from one another. In addition, buffer strips can be used to minimize the noise of different land uses. No non-residential use may be erected or any use permitted unless a buffer strip is provided and maintained between any adjoining residential district or use and the non-residential structure or use.

a. Natural Features

The side and rear yards of non-residential facilities abutting residential districts shall attempt to maintain the district boundary in a natural state to provide a buffer of at least the setback distance.

b. Landscaping

When natural features such as slope, gullies, stands of trees, shrubbery or rock outcrops do not exist or are insufficient to provide a buffer, the developer shall provide a landscaped area at least thirty (30) feet wide. Where such landscaping is not feasible, as determined by the Code Enforcement Officer, the developer shall provide a fence at least six (6) feet high between the adjoining residential district and the non-residential use.

c. Effect of Buffering

Natural features, landscaping, or, if necessary, fencing or screening, should be expected to obstruct the view of the proposed development from abutting properties.

d. Fencing and Screening

Fencing and screening, when necessary, shall be properly maintained and located or constructed in such a manner that it can be maintained from the developer's property.

5. Explosive Materials

No flammable or explosive liquids, solids or gases shall be stored in bulk (more than 500 gallons) above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet for underground storage, and greater than one thousand (1,000) feet from public water supply. All materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate Federal, State and local regulations.

6. Sanitary Provisions

- a.** The approval of building permit applications shall be subject to presentation of a completed site evaluation form (HHE-200) from the Maine Department of Human Services Bureau of Health Engineering that provides evidence of adequate soil conditions for subsurface wastewater disposal.
- b.** When two or more lots or buildings in different ownership share a common subsurface disposal system, the system shall be owned and maintained in common by a written agreement amongst the owners.
- c.** Industrial or commercial wastes shall require pretreatment at the industrial or commercial site. Pretreatment may include, but not be limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation, reduction and dilution. The disposal of industrial or commercial waste waters shall comply with the laws of the State of Maine concerning water pollution.

7. Storage of Materials

All materials stored outdoors shall be stored in such a manner as to prevent the breeding and harboring of insects, rats or other vermin. This shall be accomplished by enclosures in containers, raising materials above ground, separation of materials, prevention of stagnant water, extermination procedures or other means.

8. Water Quality Protection

No materials of any kind shall be permanently or temporarily placed or deposited directly into or in the flood plains of any river or stream, lake, pond or tidal waters or on the ice thereof where such material may fall or otherwise find its way into said water courses or tidal waters, nor shall such material be placed or deposited directly in pits, wells or on the ground surface except in conformity with applicable local, State, and Federal laws.

B. Specific Standards

1. Extractive Activities

Any extractive industry which requires a permit from the Maine Department of Environmental Protection under the Site Location of Development Act shall obtain written approval from the Department of Environmental Protection in addition to approval by the Planning Board under the site plan review procedures of this ordinance. Site plan approval by the Planning Board shall be conditioned upon State approval. In addition:

- a. The Planning Board may require a performance guarantee sufficient to cover the cost of rehabilitation of the site at the conclusion of operations.
- b. A buffer strip of not less than one hundred (100) feet shall be maintained between the location of any extraction of materials and all property lines.
- c. All areas of standing water exceeding two (2) feet in depth shall be entirely enclosed by a fence.
- d. No extraction of materials shall be permitted which creates a slope steeper than two (2) feet horizontal to one (1) foot vertical.
- e. Operation of equipment and extraction of materials from the site shall be permitted only Monday through Friday between the hours of 7:30 a.m. and 5:30 p.m.
- f. Suitable traffic control measures shall be made available by the operator at all access points to public streets. Truck routes shall be restricted to collector and arterial streets unless otherwise specified by the Planning Board. All loads shall be covered or trimmed a minimum of three (3) inches below the edges of the sideboard of truck bodies to prevent spillage of materials being transported.
- g. Upon cessation of the extraction of materials or upon the expiration of the Planning Board approval, the site shall be rehabilitated in accordance with a plan approved by the County Soil Conservation Service and the Planning Board.

2. Home Occupations

- a. Permitted home occupations shall be carried out without altering the residential character of the structure or neighborhood or changing the character of the lot from its principal use as a residence. A home occupation shall be permitted if it complies with all of the requirements of this Section.
- b. A home occupation shall be carried on by permanent residents of the dwelling unit, with not more than two employees who are not residents of the dwelling unit.
- c. The home occupation shall be carried on wholly within the principal or accessory structures. There shall be no outside storage or display of materials or products or equipment or vehicles.
- d. The Performance Standards of this ordinance shall apply (see Section 5.G).
- e. One non-illuminated sign, no larger than six (6) square feet may be erected on the premises.
- f. The sale of products shall be limited to those which are crafted, assembled, or substantially altered on the premises; to catalog items ordered off the premises by customers; and to items which are accessory and incidental to a service which is provided on the premises.

3. Industrial Facilities and Related Uses

- a. All business, service, repair, manufacturing, storage, processing, or display on property abutting or facing a residential use or property shall be conducted wholly with an enclosed building unless screened from the residential area.
- b. Doors, windows, loading docks, and other openings in structures shall be prohibited on sides of the structure adjacent to or across a street from a residential use or property.
- c. All other yards abutting or across a street from a residential use or property shall be continuously maintained in lawn or other landscaping unless screened from the residential use.
- d. Access points from a public road to industrial operations shall be so located as to minimize traffic congestion and to avoid directing traffic onto local access streets of a primarily residential character.
- e. All materials including wastes shall be stored, and all grounds shall be maintained in a manner which will not attract or aid the propagation of insects or rodents or create a health hazard.

4. Recreational Facilities

All recreational facilities shall meet the provisions below:

- a. Adequate off-street parking for the anticipated maximum attendance at any event shall be provided.
- b. Containers and facilities for rubbish collection and removal shall be provided.
- c. Screening, buffer areas, or landscape provisions shall be built, planted, or maintained, according to the "Buffer Zone" standards of this Ordinance, to protect adjacent residences from adverse noise, light, dust, smoke and visual impact.
- d. The proposed use shall not create a traffic hazard.
- e. Adequate sanitary facilities shall be provided.

Section 5. Site Plan Review

A. Purposes

The purposes of site plan review are to:

1. Provide a level of municipal review that would not otherwise occur for projects that could potentially impact the community.
2. Conserve the Town's natural beauty and historic character by ensuring that structures, signs and other improvements are sited and developed with due regard to the aesthetic qualities of the natural terrain and that proper attention is given to exterior appearances of structures, signs, and other improvements; and
3. Sustain the comfort, health, tranquility and contentment of residents, and thus to promote and protect the health, welfare and safety of the Town.

B. Applicability

Site Plan approval by the Planning Board in conformity with the criteria and standards of this Section, shall be required for uses in each district which specifically require site plan approval, regardless of size, and any change of use. This Ordinance shall apply to the construction or establishment of multi-family dwellings and non-residential uses.

C. Administration

1. **Pre-application Meeting.** Applicants are encouraged to schedule a meeting with the Planning Board, prior to a formal submission, to discuss their plans and gain an understanding of the Site Inventory Analysis review procedures, requirements and standards. The Planning Board may modify or waive specific application submission requirements when an applicant can show that such requirements are not relevant to the proposed project and the Board determines that because of the size of the project or circumstances of the site such requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect the abutting landowners or the general health, safety and welfare of the Town.

2. **Applications in Writing.** All applications for site plan approval shall be made in writing to the Planning Board and/or Code Enforcement Officer (CEO) on the forms provided for this purpose. The Planning Board and/or CEO shall make an initial determination of the completeness of the application within thirty (30) days of its receipt. All applications shall be made by the owner of the property or his agent, as designated in writing by the owner.
3. **Fees.** An application for site plan approval shall be accompanied by an appropriate fee. A copy of the Schedule of Fees is available at the Town Office. This application fee shall be made by check payable to the Town of Cherryfield. This fee shall not be refundable.
4. **Planning Board Agenda.** The application for site plan review, together with the documentation required in these regulations, shall be placed on the Planning Board's agenda for consideration within thirty (30) days of its receipt. However, any application which the Planning Board and/or CEO initially determines to be incomplete shall not be placed on the agenda, but shall be returned to the applicant by the Planning Board and/or CEO with an indication of the additional information required. When this additional information has been supplied, the Planning Board and/or CEO shall place the application on the Planning Board's agenda. The Planning Board shall then make a final determination of the completeness of the application. Within sixty (60) days of the receipt of a completed application, as determined by the Planning Board and/or CEO, the Board shall act to approve or disapprove the site plan as submitted or amended.
5. **Disapproval.** If the Board shall vote to disapprove an application, the owner or his authorized agent shall be notified in writing and the specific causes of disapproval shall be noted.
6. **Approval.** If the Board shall vote to approve the site plan application, the Planning Board and/or CEO shall issue a building permit, provided that all other requirements of this Ordinance are met.

D. Professional Review

1. **Professional Services.** The Planning Board may require that an expert consultant or consultants review one or more submissions of an application and report as to compliance or non-compliance with this Ordinance, and advise if necessary, of procedures which will result in compliance. The consultant shall estimate the cost of such review and the applicant shall deposit with the Town the full estimated cost, which the Town shall place in an escrow account. The Town shall pay the consultant from the escrow account and reimburse the applicant if funds remain after payments are completed. The consultants shall be fully qualified to provide the required information.
2. **Additional Studies.** The Planning Board may require the applicant to undertake any study which it deems reasonable and necessary to insure that the requirements of the Ordinance are met. The costs of all such studies shall be borne by the applicant.
3. **Public Review.** Prior to taking final action on any site plan review application, the Planning Board may hold a hearing to afford the public the opportunity to comment on the application.

4. **Notice to Abutters.** Abutting property owners shall be notified by mail, by either the applicant, Planning Board Chair or Town Clerk, of a pending application for site plan review. This notice shall indicate the time, date, and place of Planning Board consideration of the application.
5. **Financial Guarantee.** The Planning Board may require the posting, prior to final approval of any plan, of a bond or escrow agreement in such amount as is approved by the Board as being reasonably necessary to ensure completion of all improvements required as conditions of approval of such plan, in such form as approved by the Board and Town Selectmen. The Town shall have access to the site at all times to review the progress of the work and shall have the authority to review all records and documents related to the project.
6. **Conditions.** The Planning Board may attach reasonable conditions to site plan approvals to ensure conformity with the standards and criteria of this Ordinance.
7. **Expiration of Approvals.** All site plan approvals shall expire within one (1) year of the date of issuance unless work thereunder is commenced.

E. Site Inventory and Analysis Review

The site inventory and analysis review shall be informational and shall not result in any formal approval or disapproval of the project by the Board. This review is intended to determine whether this is a major or minor project and to provide a clear understanding of the site and the opportunities and constraints they create for its use and development. The outcome of the review process shall be determination by the Board of the issues and constraints that must be addressed in the formal site plan review application.

The site inventory and analysis submission shall contain, at a minimum, the following:

1. The names and addresses of the owner of record and the applicant.
2. The names and addresses of all consultants working on the project.
3. Five (5) copies of an accurate scale plan of the parcel at a scale of not more than one hundred (100) feet to the inch showing at a minimum:
 - a. The name of the project, north arrow, date and scale;
 - b. The boundaries of the parcel;
 - c. The topography of the site as an appropriate contour interval (2 foot to 5 foot) depending on the nature of the use and character of the site;
 - d. Major natural features of the site including wetlands, streams, ponds, flood plains, groundwater aquifers, significant wildlife habitats or other important natural features;
 - e. Existing restrictions or easements on the site;
 - f. The location and size of existing utilities or improvements servicing the site;

- g. Soils information if on-site sewage disposal is proposed. This information should be detailed enough to allow those portions of the site not suitable for on-site disposal systems to be identified.
- 4. Five (5) copies of a narrative describing the existing conditions of the site, the proposed use and the constraints or opportunities created by the site. This submission should include any traffic studies, utility studies, market studies or other preliminary work that will assist the Planning Board in understanding the site and the proposed use.
- 5. Five copies of a site analysis plan at the same scale as the inventory plan highlighting the opportunities and constraints of the site. This plan should enable the Planning Board to determine which portions of the site are unsuitable for development or use, which portions of the site are unsuitable for on-site sewage disposal if public sewerage is not available, which areas of the site have development limitations (steep slopes, poor soils, wetlands, aquifers, wildlife habitat, scenic areas, flood plains, drainage, etc.) which must be addressed in the development plan, areas where there may be off-site conflicts or concerns (e.g., noise, lighting, traffic, etc.) and areas well suited to the proposed use.
- 6. A summary narrative of the key constraints and opportunities which need to be addressed in the development plan.

F. Site Plan Review Application

Applications for site plan review shall be submitted on application forms provided by the Town. The complete application form, required fees, and the required plans and related information shall be submitted to the Town Office who shall forward it to the Planning Board and/or CEO. The submission shall contain at least the following exhibits and information:

- 1. A fully executed and signed copy of the application for development review.
- 2. One (1) original of all maps and drawings on durable, permanent material.
- 3. Five (5) copies of written materials plus five (5) sets of maps or drawings containing the information listed below. The maps or drawings shall be at a scale sufficient to allow review of the items listed under approved criteria, but in no case shall be more than fifty (50) feet to the inch for that portion of the tract of land being proposed for development.
- 4. **General Information:**
 - a. Name of owner of record and address and applicant's name and address if different.
 - b. The name of the proposed project.
 - c. Names and addresses of all property owners within five (500) feet of the edge of the property line.
 - d. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
 - e. Copy of tax map showing map and lot number of the parcel or parcels.

- f. A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title, or interest in the property on the part of the applicant.
- g. The name, registration number and seal of the land surveyor, architect, engineer and/or similar professional who prepared the plan.

5. Existing Conditions:

- a. Zoning district classification of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or abuts a different district.
- b. The bearings and distances of all property lines of the property to be developed and the source of this information.
- c. Location and size of any existing sewer and water mains, culverts and drains on the property to be developed and of any that will serve the project from abutting streets or land.
- d. Location, names, and present widths of existing streets and rights-of-way within or adjacent to the proposed project.
- e. The location, dimensions and ground floor elevations of all existing buildings on the site.
- f. The location and dimensions of existing driveways, streets, parking and loading areas and walkways on the site.
- g. Location of intersecting roads or driveways within two hundred (200) feet of the site.
- h. The location of open drainage courses, wetlands, stands of trees, and other important natural features, with a description of such features to be retained.
- i. The direction of existing surface water drainage across the site.
- j. The location, front view and dimensions of existing signs.
- k. Location and dimensions of any existing easements and copies of existing covenants or deed restrictions.

6. Commercial Development Activity Proposals:

- a. The location of all building setbacks, yards and buffers required by this Ordinance.
- b. The location, dimensions, and ground floor elevations of all proposed buildings on the site.

- c. The location and dimensions of proposed driveways, parking and loading areas, and walkways.
 - d. The location and dimensions of all provisions for water supply and wastewater disposal.
 - e. The direction of proposed surface water drainage across the site.
 - f. Location, front view, and dimensions of proposed signs.
 - g. Location and type of exterior lighting.
 - h. Proposed landscaping and buffering.
 - i. Copies of applicable State approvals and permits, provided however, that the Board may approve development plans subject to the issuance of specified State approvals and permits where it determines that it is not feasible for the applicant to obtain them at the time of development review.
 - j. A schedule of construction, including anticipated beginning and completion dates.
 - k. Space shall be provided on the plan for the signatures of the Planning Board and date together with the following words, "Approved: Town of Cherryfield Planning Board."
7. Applications for all major projects, commercial or residential, shall include the following additional information:
- a. Existing and proposed topography of the site at two (2) foot contour intervals, or such other intervals as the Planning Board may determine.
 - b. A storm water drainage and erosion control program showing:
 - (1) Existing and proposed method of handling storm water run-offs.
 - (2) The direction of flow of the run-off through the use of arrows.
 - (3) The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins, and storm sewers.
 - (4) Engineering calculations used to determine drainage requirements based upon the 25-year/24-hour storm frequency, if the project will significantly alter the existing drainage pattern due to such factors as the amount of new impervious surfaces such as paving and building area being proposed.
 - (5) Methods of controlling erosion and sedimentation during and after construction.
 - c. A groundwater impact analysis prepared by a ground-water hydrologist for projects involving common on-site water supply or sewage disposal facilities with a capacity of two thousand (2,000) gallons per day.

- d. A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone, and any other utility services to be installed on the site.
- e. A planting schedule keyed to the site plan and indicating the general varieties and sized of trees, shrubs, and other plants to be planted on the site.
- f. A traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets.
- g. A professional determination that there is an adequate water supply for this project without depleting or significantly degrading the underlying aquifers.
- h. The location, width, typical cross-section, grades and profiles of all proposed streets and sidewalks.
- i. Construction drawings for streets, sanitary sewers, water and storm drainage systems, designed and prepared by a professional engineer registered in the State of Maine.
- j. The location of any pedestrian ways, lots, easements, open spaces and other areas to be reserved for or dedicated to public use and/or ownership. For any proposed easement, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development. In the case of any streets or other ways dedicated to public ownership, the developer shall submit a signed statement that he will maintain such streets or ways year-round until they are accepted by the Town.
- k. A copy of such covenants or deed restrictions, if any, as are intended to cover all or part of the tract. Such covenants or deed restrictions shall be referenced on the plan.
- l. Written offers of dedication or conveyance to the town or a form satisfactory to the Town Attorney, of all land included in the streets, highways, easements, parks, or other open space dedicated for public use, and copies of agreements or other documents showing the manner in which open spaces, title to which is reserved by the developer, are to be maintained.
- m. If the development is a condominium or a clustered development, evidence that all requirements relative to establishment of a homeowners' association or condominium owners' association have been met. If the development is a clustered development, evidence shall be presented that all other requirements of this ordinance pertained to clustered development have been met. The submission shall include copies of the by-laws of any homeowners' or condominium association charged with maintaining common spaces and lands. Homeowners' associations or condominium documents shall clearly state that the association or condominium shall properly maintain private roadways serving the development after the developer has legally relinquished that responsibility and until such time as the Town may accept them as public ways.
- n. Cost of the proposed development and evidence of financial capacity to complete it. This evidence should be in the form of a letter from a bank or other source of financing

indicating the name of the project, amount of financing proposed, and interest in financing the project.

- o.** A narrative and/or plan describing how the proposed development scheme relates to site inventory and analysis.
- p.** Analysis of the impact on public safety and services.

G. Criteria and Standards

The following criteria and standards shall be utilized by the Planning Board in reviewing applications for site plan approval. The standards are not intended to discourage creativity, invention and innovation. The Planning Board may waive the criteria presented in this section upon a determination by the Planning Board that the criteria are not applicable to the proposed action or upon a determination by the Planning Board that the application of these criteria are not necessary to carry out the intent of this Ordinance. The Planning Board shall approve the site plan unless the plan does not meet the intent of one or more of the following criteria provided that the criteria are not first waived by the Planning Board.

- 1. Preservation of the Historic Character of the Town.** The project shall protect and maintain the character of the Historic Village (HV).
- 2. Protection of the Socio-Economic Stability of the Town.** The project shall contribute to orderly development and will protect the socio-economic stability of the Town and will not create an unduly adverse impact on community services and facilities such as: fire, police and rescue protection, road maintenance and safety and other public safety functions.
- 3. Preservation of Landscape.** The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. If a site includes a ridge or ridges above the surrounding areas and provides scenic vistas for surrounding areas, special attempts shall be made to preserve the natural environment of the skyline of the ridge. Existing vegetation and buffering landscaping are potential methods of preserving the scenic vistas. Environmentally sensitive areas such as wetlands, steep slopes, flood plains and unique natural features shall be maintained and preserved to the maximum extent. Natural drainage areas shall be preserved to the maximum extent.
- 4. Access to the Site.** Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on major access routes to the site which are functioning at a Level of Service of C or better prior to the development shall function at a minimum at Level of Service C after development. The determination of level of service shall be based on data available from the Maine Department of Transportation Bureau of Planning, Transportation Analysis Section. (Peak-hour Level of Service in MEDOT roads GIS data reflects the estimated peak hour level of service (A-F), based on speed limit, annual average daily traffic (AADT), capacity, access control and urban/rural status.) If any intersection is functioning at a Level of Service D or lower prior to the development, the

project shall not reduce the current level of service. The Planning Board may approve a development not meeting this requirement if the applicant demonstrates that:

- a. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
 - b. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will guarantee the completion of the improvements within one (1) year of approval of the project.
5. **Access into the Site.** Roads/driveways into the development shall provide for safe and convenient access and the following standards shall apply:
 - a. Any exit driveway or proposed street shall be so designed as to provide a minimum sight distance of ten times the posted speed limit in each direction, as measured from the point at which the driveway or street meets the public or private right-of-way.
 - b. Points of access shall be located to avoid hazardous conditions or conflicts with existing turning movements and traffic flows.
 - c. The grade of any exit driveway or proposed street for a distance of one hundred feet from its intersection with any existing street shall be a maximum of three (3) percent.
 - d. The throat length of any entrance shall be of sufficient length to prevent incoming vehicles from queuing back onto the highway.
 - e. Driveways and entranceways shall be designed so that all maneuvering and parking of any vehicles shall take place outside the right of way of the highway and such that vehicles may exit the premises without backing onto the shoulder or traveled portion of the highway.
 - f. Except for forestry management and farming activities, lots on major collector roads shall be limited to one two-way or two one-way entrances.
 - g. The intersection of any access drive or proposed street shall function at a Level of Service of C following development if the project will generate four hundred (400) or more vehicle trips per twenty-four hour period or at a level which will allow safe access into and out of the project if less than four hundred (400) trips are generated.
 - h. Projects generating four hundred (400) or more vehicle trips per twenty-four (24) hour period shall provide two (2) or more separate points of vehicular access into and out of the site.
6. **Internal Vehicular Circulation.** The layout of the site shall provide for the safe movement of passenger, service and emergency vehicles through the site and the following standards shall apply:
 - a. Nonresidential projects shall provide a clear route for delivery vehicles with appropriate geometric design to allow turning and backing for vehicles expected to use the facility.

- b. Clear routes of access shall be provided and maintained for emergency vehicles to all portions of the site and shall be posted with appropriate language.
 - c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot and shall prohibit vehicles from backing out onto a street.
 - d. No parking shall be directly accessible from any public way. Parking spaces shall be provided as detailed in Section F., Page 11.
 - e. All streets and accessways shall be designed to follow the topographic and natural features of the site. The road network shall provide for vehicular and pedestrian safety, all-season emergency access, snow storage and delivery and collection services.
7. **Pedestrian Circulation.** The development plan shall provide for a system of pedestrian circulation within the development. This system shall connect with existing sidewalks if they exist in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way- in open space or recreation areas. The system shall be designed to link residential units with recreational and commercial facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood.
8. **Environmental Standards.** The site plan shall be designed in accordance with the following applicable standards designed to protect the environment:
- a. Site preparation – any fill used shall consist of clean soil or gravel that is free of liquid or solid waste, or hazardous materials.
 - b. Conservation, erosion and sediment control. The following measures shall be included where applicable as part of any site plan review and approval.
 - (1) Stripping of vegetation, regrading or other development shall be done in such a way as to minimize erosion by phasing the development to minimize disturbed areas, and using erosion control measures installed and maintained in accordance with the Maine Erosion and Sediment Control BMPS, March 2003 DEPLW0588.
 - (2) Development shall preserve salient natural features, keep cut-fill operations to a minimum and ensure conformity with the topography so as to create the least erosion potential and so as to adequately handle surface water runoff.
 - (3) The disturbed area and the duration of exposure of the disturbed area shall be kept to a minimum. Disturbed areas shall be mulched on a weekly basis and before each storm event. Any disturbed areas not permanently stabilized within a thirty (30) day period shall be temporarily seeded and mulched to establish vegetation.
 - (4) The permanent (final) vegetation and mechanical erosion control measures shall be installed as soon as each phase of the site is completed and shall be installed in accordance with the Maine Erosion and Sediment Control BMPS, March 2003 DEPLW0588.

- (5) Until the disturbed area is stabilized, sediment in the runoff water shall be trapped by the use of debris basins, sediment basins, silt traps or sediment barriers. Collected sediment shall be removed and disposed of in a manner that prevents further erosion in accordance with the Maine Solid Waste management laws and regulations.
 - (6) All potential sedimentation that may be caused by stripping vegetation, regrading or other development, shall be prevented from going beyond the project site boundary or into any protected natural resource through the use of sediment control measures installed and maintained in accordance with the Maine Erosion and Sediment Control BMPS, March 2003 DEPLW0588.
 - (7) Any activity on a stream, watercourse or swale or upon a floodway or right-of-way shall comply with the State's Natural Resources Protection Act, Title 38 M.R.S.A. Sections 480A-480S. Any such activity shall also be conducted in such a manner so as to maintain as nearly as possible the present state of the stream, watercourse, swale, floodway or right-of-way for the duration of the activity and shall be returned to its original or equal condition after such activity is completed.
 - (8) Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.
- c. Site conditions:
- (1) During construction, the site shall be maintained and left each day in a safe and sanitary manner. The site area shall be regularly sprayed to control dust from construction activity.
 - (2) Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials shall be removed or destroyed immediately upon the request and to the satisfaction of the Code Enforcement Officer and shall be disposed of in compliance with the Maine Solid Waste management laws and regulations.
 - (3) Changes in elevation. No change shall be made in the elevation or contour of any lot or site by the removal of earth to another lot or site other than as shown on an approved site plan. Minimal changes in elevations or contours necessitated by field conditions may be made only after approval by the Code Enforcement Officer.
9. **Open Space.** The site plan shall be designed in accordance with the following applicable standards designed to protect open spaces.
- a. Open space areas shall be contiguous, where possible.
 - b. Open spaces as shown on any approved development plan shall contain a notation that common open space areas shall not be further developed for any other use.
 - c. When reviewing the location and type of open space designated in an application, the Planning Board shall require:

- (1) Buildings, accessways, and parking areas shall be designed and situated:
 - (a) To minimize alterations of the natural site;
 - (b) To avoid the adverse effects of shadows, noise and traffic as they relate to surrounding properties;
 - (c) To enhance the building and the neighborhood.
- (2) Diversity and originality in layout shall be encouraged.
- (3) Open space shall include irreplaceable natural features located on the tract (such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, rock outcroppings and traditional points of access to the water).
- (4) Open space intended for recreation or public use shall be determined by the size, shape, topographic and location requirements of the site.
10. **Relation of Proposed Buildings to Environment.** Proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed structures, so as to have a minimal adverse effect on the environmental and aesthetic qualities of the developed and neighboring areas.
11. **Surface Water Drainage.** Adequate provisions shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, or the public storm drainage system and shall be held to a zero percent or less off-site increase in quantity after development. On-site absorption shall be utilized to minimize discharges whenever possible. All drainage calculations shall be based on a twenty-five year storm frequency. Emphasis shall be placed on the protection of floodplains and wetlands; preservation of stream corridors; establishment of drainage rights-of-way and the adequacy of the existing system; and the need for improvements, both on site and off site, to adequately control the rate, volume and velocity of storm drainage. Maintenance responsibilities shall be reviewed to determine their adequacy.
12. **Groundwater Protection.** The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or public water supply systems. Projects involving common on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.
13. **Water Supply.** The development shall be provided with a system of water supply that provides each use with an adequate supply of water meeting the standards of the State of Maine for drinking water.
14. **Sewage Disposal.** A sanitary sewer system shall be installed at the expense of the developer, or, if in the opinion of the Planning Board, service by a sanitary sewer system is not feasible, the Board may allow individual underground waste disposal systems to be used.

- a. Upstream sewage flows shall be accommodated by an adequately sized system through the proposed project for existing conditions and potential development in the upstream area or areas tributary to the proposed development.
 - b. All individual on-site systems shall be designed by a Licensed Site Evaluator in full compliance with the Maine State Plumbing Code, as amended. Upon the recommendation of the Local Plumbing Inspector, the Planning Board may require the location of reserve areas for replacement systems.
- 15. **Utilities.** Any utility installations above ground shall be located so as not to be unsightly or hazardous to the public and shall be landscaped or otherwise buffered so as to screen the components from public view.
- 16. **Advertising Features.** The size, location, texture and lighting of all exterior signs and outdoor advertising structures or features shall not detract from the layout of the property and the design of proposed buildings and structures and the surrounding properties, and shall not constitute hazards to vehicles and pedestrians.
- 17. **Special Features.** Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures and similar accessory areas and structures, shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.
- 18. **Exterior Lighting.** All exterior lighting shall be designed to encourage energy efficiency, to ensure safe movement of people and vehicles, and to minimize adverse impact on neighboring properties and public ways. Adverse impact is to be judged in terms of hazards to people and vehicular traffic and potential damage to the value of adjacent properties. Lighting shall be directed downward to minimize glare and reflection on adjacent properties and the traveling public.
- 19. **Emergency Vehicle Access.** Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures at all times.
- 20. **Landscaping.** Landscaping shall be designed and installed to define, soften, or screen the appearance of off-street parking areas from the public right-of-way and abutting properties, to enhance the physical design of the building (s) and site, and to minimize the encroachment of the proposed use on neighboring land uses. Particular attention shall be paid to the use of planting to break up parking areas.
- 21. **Waste Disposal.** The proposed project shall provide for adequate disposal of solid wastes and hazardous wastes.
 - a. All solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.
 - b. All hazardous wastes shall be disposed of at a licensed hazardous waste disposal facility and evidence of a contractual arrangement with the facility shall be submitted.

Section 6. Preservation of Archaeological and Historic Resources

A. Purpose

The purpose of this section is to implement the historic preservation element of the Comprehensive Plan, to achieve preservation of pre-historic and historic resources, and to advance the following public purposes:

1. To preserve and protect archaeological, historic, architectural, cultural and aesthetic resources for the general welfare of the public and to enhance the environmental quality of the Town.
2. To strengthen the Town's economic base by the stimulation of the tourist industry.
3. To establish and improve property values.
4. To foster sympathetic economic development, and to manage growth.
5. To foster civic pride in the beauty and accomplishments of the Town's past.

B. Archaeological Resources

The following provisions are intended to prevent the disturbance of sites with potential or identified archaeological significance until their importance is documented.

1. **Identified Sites:** No activity which disturbs the ground such as trenching, grading, or excavating shall be commenced and no building permit or approval shall be issued within any "Area Sensitive for Prehistoric Archaeology" as identified by the map of Cherryfield of July 2005 provided by the Maine Historic Preservation Commission and made part of this ordinance, until the Maine Historic Preservation Commission has been notified of the nature of the proposed activity in writing by the owner of the property, a copy of the notice is provided to the Planning Board and/or Code Enforcement Officer, and a reconnaissance level archaeological survey is conducted - unless the Maine Historic Preservation Commission notifies the owner in writing that such a survey will not be needed. (A copy of the map of Areas Sensitive for Prehistoric Archaeology is attached.)

The survey requirement will be deemed satisfied if the Maine Historic Preservation Commission has not carried out a survey or responded to the owner in writing within 30 days or if the owner of the property has a reconnaissance level survey completed by a competent professional and provides a copy of the survey to the Maine Historic Preservation Commission and the Planning Board and/or Code Enforcement Officer.

The Archaeological Resource Potential Areas as identified on the map are on the edge of the "Blueberry Barrens," along the Narraguagus River Valley, along the West Branch of the Narraguagus River, that area between the two branches known as the Crotch, and along Tunk Stream. The two prehistoric archaeological sites (sites 60.1 and 60.2) known to exist within the town of Cherryfield are protected under Shoreland Zoning and Flood Plain Management Ordinance provisions that have been adopted by the Town.

2. **Note - Other Areas:** If an artifact is uncovered during ground-disturbing activities in areas not identified as archaeological resource potential areas, the activities should be halted at once. To document all evidence for prehistoric use of this area, a voluntary program of reporting prehistoric finds has been implemented. If an artifact (e.g. arrowhead, stone tool, pottery, concentration of shells, etc.) is uncovered, the landowner is requested to document the find and its location as fully as possible and file such information as soon as possible with the Planning Board and/or CEO. Help with such documentation can be obtained through the Planning Board and/or Code Enforcement Officer, who may seek professional advice to determine if the artifact has significant diagnostic or temporal importance to the prehistory of this area.

In the event that any identifiable human remains are found, whether modern, historic or prehistoric, County Law Enforcement (e.g. the Sheriff) shall be notified immediately and the remains shall not be disturbed until they have been examined by the appropriate authority.

B. Historic Resources

The following provisions are intended to establish a waiting period prior to the demolition of a historically significant building or structure to allow for alternatives to be explored.

1. **Identified Resources:** No permit for the demolition, in whole or in part, of a historical building or structure listed on the Cherryfield Historic District Map and made a part of this Ordinance, shall be issued until forty-five (45) days after notice has been provided to the Town Manager and/or Code Enforcement Officer, and Maine Historic Preservation Commission, and has been published in a newspaper of general circulation in Washington/Hancock County. Upon completion of the forty-five (45) day notice period, the Planning Board and/or Code Enforcement Officer shall issue the demolition permit subject to the normal review and standards unless:

- a. The applicant has withdrawn the request, or
- b. A court of law has issued an injunction barring the issuance of the permit.

The forty-five (45) day notice period shall not apply to the demolition of accessory buildings or structures other than barns that are part of the "historic character" of the site, the removal of additions that are not part of the "historic character" of the building, or the demolition of the remains of a building resulting from a fire or destruction by a natural disaster.

Section 7. Sub-Division Requirements

See Town of Cherryfield Sub-Division Ordinance.

Section 8. Shoreland Requirements

See Town of Cherryfield Shoreland Ordinance.

Section 9. Flood Plain Requirements

See Town of Cherryfield Flood Plain Ordinance

Section 10. Administration, Enforcement and Penalties

A. Administering Bodies and Agents

1. Code Enforcement Officer

- a. Appointment.** A Code Enforcement Officer shall be appointed or reappointed annually by the Board of Selectmen.
- b. Powers and Duties.** The Code Enforcement Officer shall have the following powers and duties:
 - (1) Enforce the provisions of this Ordinance.
 - (2) Act upon building, construction, and use applications, and refer requests for variances and administrative appeals to the Board of Appeals.
 - (3) Enter any property at reasonable hours with the consent of the owner, occupant or agent to inspect the property or building for compliance with this Ordinance.
 - (4) Investigate complaints and reported violations.
 - (5) Keep written inspection reports and thorough records.
 - (6) Issue violation notices.
 - (7) Participate in appeals procedures.
 - (8) Appear in court when necessary
 - (9) Confer with citizens in the administration and enforcement of this Ordinance.
 - (10) Regularly attend meetings of the Board of Appeals and the Planning Board.
 - (11) Revoke a permit after notice and hearing if it was issued in error or if it was based on erroneous information.

- 2. Planning Board -** The Town Planning Board shall be responsible for reviewing and acting upon applications for building permits and site plan review approval. Following approvals, the Planning Board will issue a building permit.
- 3. Board of Appeals -** The Board of Appeals shall be responsible for deciding administrative and variance appeals in accordance with the requirements of Section 11.

B. Permits Required

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change or replace an existing use or structure; or renew a discontinued nonconforming use.

1. **Building Permit.** A building permit shall be obtained for uses which are listed as permitted uses in Section 3 of this Ordinance.
2. **Site Plan Review.** Site plan review approval shall be obtained from the Planning Board for all uses which are listed as uses requiring site plan approval in Section 3 of this Ordinance.

C. Permit Application

1. **Application Form.** Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the Town Office.
2. **Authorization.** All applications shall be signed by the owner or owners of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property, then that person shall submit a letter of authorization from the owner or lessee.
3. **Date.** All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
4. **Sewage Disposal and Plumbing Permits.** A soil evaluation and a septic system plan by a Licensed Soils Evaluator in full compliance with the Maine State Plumbing Code, as amended, must be submitted showing septic system design and all Maine State required plumbing permits, as determined by the Local Plumbing Inspector, must be completed prior to Planning Board Review.
5. **Application Fee.** An appropriate fee shall accompany the application. This application fee shall be made by check payable to the Town. A schedule of fees is available in the Town Office. No building permit shall be issued until the fee is paid. This fee shall not be refundable.

D. Procedure for Administering Permits

1. **Determination of Complete Application.** Within 30 days of the date of receiving a written application, the Planning Board and/or Code Enforcement Officer shall notify the applicant either that the application has been accepted as a complete application, or, if the application is incomplete, that specific additional material is needed to make the application complete.

2. **Public Hearing.** If a public hearing is held, it shall be held within 30 days of the date of acceptance of the complete application or at a time agreed upon by the Planning Board and the applicant.
3. **Timing of Actions.** The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 30 days of a public hearing or, if no public hearing is held, within 30 days of the date of acceptance of the application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 30 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 30 days of the public hearing, if one is held or following acceptance of the complete application, if no hearing is held.
4. **Approval.** Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.
5. **Burden of Proof.** The applicant shall have the burden of proving that a proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

E. Expiration of Permit

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

F. Installation of Public Utility Service

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

G. Enforcement

1. Enforcement Procedure

- a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and shall be maintained as a permanent record.
- b. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

- c. The Code Enforcement Officer shall keep a complete record of all essential transactions, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. In the case of violations in the 250-foot Shoreland Zone, the Code Enforcement Officer shall, on an annual basis, submit a summary of the record of such violations to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.
2. **Legal Action.** When the above action does not result in the correction or abatement of the violation or nuisance condition, the Board of Selectmen, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town. The Board of Selectmen, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recording fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized town official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in substantial environmental damage.
3. **Fines.** Any landowner who orders or conducts any activity in violation of this Ordinance may be penalized as follows: A fine of not less than \$100.00 per month, nor more than \$2500.00 in total, except if the stated violation is corrected within 90 days of receipt of Notice of Violation from the Code Enforcement Officer, at which time the appropriate Building Application fee must be paid and all paperwork completed in full. Any appeal to the assessment of a fine must be brought to the Board of Appeals, within the 90 days after notification.

Section 11. Appeals

A. Appointment and Composition

1. The Board of Selectmen shall appoint members of the Board of Appeals.
2. The Board shall consist of three (3) members with service-staggered terms of three (3) years.
3. The Board shall elect annually a chairman and secretary from its membership. The secretary shall provide for the keeping of the minutes of the proceedings of the Board of Appeals, which shall show the vote of each member upon each question. All minutes of the Board shall be public record. The Planning Board shall be notified of all administrative appeals and variance appeals reviewed.

B. Powers and Duties

- 1. Administrative Appeals.** To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of this ordinance.
- 2. Variance Appeals.** To authorize variances upon appeal, within the limitations set forth in this Ordinance.
 - a.** Variances may be granted only from dimensional requirements including frontage, lot area, lot width, structure height, percent of lot coverage, and setback requirements.
 - b.** Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

- c.** The Board shall not grant a variance unless it finds that;

- (1)** The proposed structure or use would meet the performance standards of this ordinance except for the specific provision which has created the non-conformity and from which relief is sought;
- (2)** The strict application of the terms of this Ordinance would result in undue hardship.

The term “undue hardship” shall mean all of the following:

- (a)** That the land in question cannot yield a reasonable return unless a variance is granted;
 - (b)** That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - (c)** That the granting of a variance will not alter the essential character of the locality; and
 - (d)** That the hardship is not the result of action taken by the applicant or a prior owner.
- d.** The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, Section 455 and the term “structures necessary for access to or egress from the property” is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

- e. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- f. In areas subject to the Mandatory Shoreland Zoning Act, a copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.
- g. If a variance is granted under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. The certificate must be recorded in the local registry of deeds within 30 days of final approval of the variance or the variance is void. The variance is not valid until recorded as provided in this provision.

C. Appeal Procedure

1. **Time Limit.** An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from.
2. **Written Notice.** Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - a. A concise written statement indicating what relief is requested and why it should be granted.
 - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief requested.
3. **Record of Case.** Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
4. **Public Hearing.** The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.
5. **Decision by Board of Appeals.**
 - a. **Quorum.** A majority of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
 - b. **Majority Vote.** The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement officer or Planning Board, remand the matter to the Code Enforcement Officer or the Planning Board, or to

decide in favor of the applicant on any matter which it is required to decide under this Ordinance, or to affect any variation in the application of this ordinance from its stated terms.

- c. **Burden of Proof.** The person filing the appeal shall have the burden of proof.
 - d. **Action on Appeal.** Following the public hearing on an appeal, the Board may affirm, affirm with conditions, or reverse the decision of the Code Enforcement officer or Planning Board. The Board may reverse the decision, or failure to act, of the Code Enforcement officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance. When errors of administrative procedures or interpretations are found, the case shall be remanded back to the Code Enforcement Officer or Planning Board for correction.
 - e. **Time Frame.** The Board shall decide all appeals within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
 - f. **Findings.** All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, and the appropriate order, relief or denial thereof.
6. **Appeal to Superior Court.** Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may appeal to Superior Court in accordance with State laws within thirty (30) days from the date of any decision of the Board of Appeals.
7. **Reconsideration.** The Board of Appeals may reconsider any decision reached within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.

Section 12. Definitions

A. Construction of Language

In the interpretation and enforcement of this Ordinance, all words other than those specifically defined in the Ordinance shall have the meaning implied by their context in the ordinance or their ordinarily accepted meaning. In the case of any difference of meaning or implication between the text of this ordinance and any map, illustration, or table, the text shall control.

- The word “person” includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual or any other legal entity.
- The present tense includes the future tense, the singular number includes the plural and the plural numbers include the singular.
- The word “shall” and “will” are mandatory, the word “may” is permissive.
- The word “lot” includes the words “plot” and “parcel.”

- The word “building” includes the word “structure.”
- The word “used” or “occupied,” as applied to any land or building, shall be construed to include the words “intended, arranged, or designed to be used or occupied.”
- The words “Town” or “municipality” means the Town of Cherryfield, Maine.

B. Definitions

In this Ordinance the following terms shall have the following meanings:

Abutter: The owner of any property with one or more common boundaries, or across the street or stream from, the property involved in an application or appeal.

Accessory Use or Structure: A use or structure which is customarily both incidental and subordinate to the principal use or structure on the same lot only. The term “incidental” in reference to the principal use or structure shall mean both a subordinate and minor in significance to the principal use or structure, and b) attendant to the principal use or structure. Such accessory uses, when aggregated, shall not subordinate the alleged principal use of the lot.

Agriculture: The cultivation of soil, producing or raising crops, including gardening as a commercial operation. The term shall also include greenhouses, nurseries and versions thereof, but these two terms, when used alone, shall refer specifically to a place where flowers, plants, shrubs, and/or trees are grown for sale.

Alteration: Any change or modification in construction, or change in the structural members of a building or structure such as bearing walls, columns, beams or girders, or in the use of a building. The term shall also include change, modification, or addition of a deck, dormer, staircase, or roof of the building.

Aggrieved Party: A person whose land is directly or indirectly affected by the grant or denial of a permit or variance under this Ordinance, or a person whose land abuts or is across a road or street or body of water from land for which a permit or variance has been granted, or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

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

Animal Breeding or Care: The keeping or raising of four or more animals, including domestic animals and pets, for any commercial use. This definition also includes kennels.

Authorized Agent: An individual or a firm that has written authorization to act on behalf of a property owner. The authorization shall be signed by the property owner(s).

Automobile Repair Shop: A business establishment engaged in general repair, engine rebuilding, or parts replacement. Automotive repair shall include body, frame, or fender

straightening and repair or painting and undercoating, and the sale of gasoline, other motor fuels or motor oil.

Automobile Graveyard, Junkyard: A place where three or more unregistered, unserviceable, discarded, worn-out, or junked automotive vehicles, or bodies, or engines thereof are gathered together.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Bed and Breakfast: Any dwelling in which transient lodging or boarding and lodging are provided and offered to the public by the owner for compensation for less than one week. This dwelling shall also be the full-time, permanent residence of its owner; otherwise, it shall be classified as a hotel/motel. There shall be no provision for cooking in any individual guest room.

Boarding, Lodging Facility: Any residential structure where lodging and/or meals are provided for compensation for a period of at least one week, and where a family residing in the building acts as proprietor or owner. When the criteria for a family residing in the building cannot be met, the building shall be classified as a hotel/motel. There shall be no provisions for cooking in any individual guest room.

Building: Any three (3) dimensional enclosure by any building materials or any space for any use or occupancy, temporary or permanent, including swimming pools, foundations or pilings in the ground, and all parts of any kind of structure above ground including decks, railings, dormers, and stairs, and excluding sidewalks, fences, driveways, parking lots, electrical transmission and distribution lines, and filed or garden walls or embankment retaining walls.

Building Height: The vertical distance between the highest point of the roof and the average grade of the existing or original ground adjoining the building. Refer to Notes (p. 12) on Height of Structures.

Business and Professional Offices: The place of business of doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychiatrists, counselors, and the like or in which a business conducts its administrative, financial or clerical operations including banks and other financial services, but not retail sales nor activities utilizing trucks as part of the business operation.

Campground: Land upon which one or more cabins or tents are erected or trailers are parked for temporary use for a fee on sites arranged specifically for that purpose. The word "campground" shall include the words "camping ground" and "tenting grounds" and shall also include the conduct of such commercial activity as is desirable to support the patrons.

Cemetery: Property used for the interring of the dead.

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

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

Club: Any voluntary association of persons organized for social, religious, benevolent, literary, scientific, or political purposes; whose facilities, especially a clubhouse, are open to members and guests only and not the general public; and not engaged in activities customarily carried on by a business or for pecuniary gain. Such term shall include fraternities, sororities, and social clubs generally.

Cluster Development: A development consisting exclusively of residential dwelling units, planned, developed as a whole or in a programmed series of developments, and controlled by one developer on a tract of five (5) or more lots which contemplates an innovative, more compact grouping of dwelling units. Cluster developments treat the developed area as an entirety to promote flexibility in design, architectural diversity, the efficient use of land, a reduction in the size of road and utility systems, the creation of permanent, common open space, and the permanent retention of the natural characteristics of the land.

Code Enforcement Officer: A person appointed by the selectmen to administer and enforce this Ordinance.

Commercial Recreation: Any commercial enterprise which receives a fee in return for the provision of some recreational activity including but not limited to: campgrounds, racquet and tennis clubs, health facility, amusement parks, golf courses, gymnasiums and swimming pools, etc., but not including bowling alleys or amusement facilities as defined herein.

Commercial School: An institution which is operated for profit, but is not authorized by the State to award baccalaureate or high degrees, which offers classes in various skills, trades, professions, or fields of knowledge.

Commercial Use: Any activity carried out for pecuniary gain.

Community Center: A building which provides a meeting place for local, non-profit community organizations on a regular basis. The Center shall not be engaged in activities customarily carried on by a business.

Conforming: A building, structure, use of land, or portion thereof, which complies with the provisions of this Ordinance.

Congregate Housing: Residential housing consisting of private apartments and central dining facilities and within which a congregate housing supportive services program serves functionally impaired elderly or disabled occupants; the individuals are unable to live independently yet do not require the constant supervision or intensive health care available at intermediate care of skilled nursing facilities. Congregate housing shall include only those facilities which have been certified by the State of Maine as meeting all certification standards and guidelines for congregate housing facilities as promulgated by the Department of Human Services pursuant to the provisions of Maine State Statutes.

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

Day Care: Homes and Centers licensed as such by the Maine Department of Human Services.

Density: The number of dwelling units per area of land.

Development: Any man-made changes to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

District: A specified portion of the town delineated on the land use map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

Duplex: A Two-Family dwelling.

Dwelling: Any building or structure or portion thereof designed or used for residential purposes.

Single-family Dwelling: Any structure containing only one (1) dwelling unit for occupation by not more than one (1) family.

Two-family Dwelling: A building containing only two (2) dwelling units, for occupation by not more than two (2) families.

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

Dwelling Unit: A room or suite of rooms used by a family as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, sleeping, bathing and sanitary facilities.

Essential Services: Facilities for the transmission or distribution of water, gas, electricity or essential communications or for the collection, treatment or disposal of wastes, including without limitation, towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories but not buildings.

Extractive Industries: The excavation, processing or storage of soil, topsoil, peat, loam, sand, gravel, rock or other mineral deposits, not including:

1. The excavation of material incidental to and at the site of approved construction of buildings, driveways or parking areas;
2. The excavation of material incidental to and at the site of construction or repair of streets; and

3. The excavation, processing or storage of less than ten (10) cubic yards of material on a lot within a one year period.

Family: One or more persons occupying a dwelling and living as a single housekeeping unit, as distinguished from a group occupying a tourist home, rooming house, hotel, motel or inn.

Filling: Depositing or dumping any matter on or into the ground or water.

Flood or Flooding:

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

Flood Insurance Rate Map: The official map of a community on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones.

Flood Plain: The land area susceptible to being inundated by water from any source (see definition of "flooding").

Floodway or Regulatory Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and in Zone A is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Forestry: The operation of timber tracks, tree farms, forest nurseries, the gathering of forest products, or the performance of forest services.

Frontage, Road: the horizontal, straight-line distance between the intersections of the side lot lines with the road right-of-way.

Frontage, Shore: The horizontal distance, measured in a straight line, between the intersections of the lot lines with the shoreline at normal high water elevation.

Garage: An accessory building, or part of a principal building, including a carport, used primarily for the storage of motor vehicles as an accessory use.

Gasoline Service Station: Any place of business at which gasoline, other motor fuels or motor oil are sold to the public for use in a motor vehicle, regardless of any other business on the premises.

Hardship: See "Undue Hardship."

Hazardous Material: Any gaseous, liquid or solid materials, either in pure form or incorporated into other materials, designated as hazardous by the Maine Department of Environmental Protection.

Home Occupation: An occupation or profession which is carried on in no more than 25% of the ground area of a detached, single-family dwelling unit by the full-time permanent occupant of the dwelling, which is clearly incidental and secondary to the use of the dwelling for residential purposes and which does not change the character thereof (by way of illustration and not of limitation, the term "home occupation" shall include the production of food products (such as breads, cookies or preserves), rugs, birdhouses, fishing flies, and quilts.) The term "home occupation" shall include both professional and personal services, within the limits on number of employees established in Section 4 of this Ordinance. A retail sales outlet does not qualify as a home business unless the item sold is a product of the owner's labor, (e.g. manufactured, produced, created, grown).

Hospital: An institution providing, but not limited to, overnight health services, primarily for in-patients, and medical or surgical care for the sick or injured, including as an integral part of the institution such related facilities as laboratories, out-patient departments, training facilities, central services facilities, and staff offices.

Hotel/Motel: A commercial building or group of buildings built to accommodate for a fee travelers and other transient guests who are staying for a limited duration with sleeping rooms, each rental unit having its own private bathroom and its own separate entrance leading either to the outdoors or to a common corridor or hallway. A hotel may include restaurant facilities where food is prepared and meals served to its guests and other customers.

Kennel: An establishment, in which more than four (4) dogs or four (4) cats are sold, housed, bred, boarded, or trained for a fee.

Lot: An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved by the Planning Board and recorded in the County Registry of Deeds.

Lot Area: The total horizontal area within the lot lines, minus land below the normal high water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Lot, Corner: A lot with at least two contiguous sides abutting upon a street or right of way.

Lot, Coverage: The percentage of a lot covered by all buildings.

Lot Lines: The lines bounding a lot as defined below:

1. **Front Lot Line:** Interior lots: the line separating the lot from a street right-of-way.
Corner lot or through lot: the line separating the lot from either street right-of-way.
Where a right-of-way does not exist or cannot be determined, the front lot line shall be the edge of the paved or graveled area of the road.
2. **Rear Lot Line:** The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten (10) feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.
3. **Side Lot Line:** Any lot line other than the front lot line or rear lot line.

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the County Register of Deeds.

Lot, Shorefront: Any lot abutting a body of water that is regulated by the Shoreland Zoning Ordinance.

Lot, Through: Any interior lot having frontages on two more or less parallel streets or rights-of-way or between a street and a body of water, or a right-of-way and a body of water, or between two bodies of water, as distinguished from a corner lot. All sides of through lots adjacent to streets, rights-of-way, and bodies of water shall be considered frontage, and setbacks shall be provided as required.

Lot Width: The distance between the side boundaries of the lot measured at the front setback line.

Manufactured Housing: A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site.

Mobile Home Park: A parcel of land under unified ownership approved by the town for the placement of three (3) or more manufactured homes.

Neighborhood "Convenience" Stores: A store of less than 1,500 square feet of floor space intended to service the convenience of a residential neighborhood primarily with the sale of merchandise, including such items as, but not limited to, basic foods, newspapers, emergency home repair articles, and other household items, but not to include "sit-down" dining or "eat-in" foods or take out windows

Net Residential Density: The number of dwelling units per minimum lot size.

Nonconforming: A building, structure, use of land, or portion thereof, legally existing at the effective date of adoption or amendment of this Ordinance which thereafter fails to conform to all applicable provisions of this Ordinance.

Nursing Home: A privately operated establishment where maintenance and personal or nursing care are provided for persons who are unable to care for themselves.

Parks and Recreation: Non-commercially operated recreation facilities open to the general public including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities. The term shall not include campgrounds, or commercial recreation and amusement centers.

Permitted Use: Uses which are listed as permitted uses in the various districts set forth in this Ordinance. The term shall not include prohibited uses.

Pharmacy, General: A retail establishment that stores, prepares and dispenses legal drugs, and may also sell general merchandise to the public.

Pharmacy, Sole Source or Drug Dispensary: A facility that exists for the purpose of dispensing chemical substances in the form of narcotic drugs for specific therapeutic purposes, and may also offer counseling along with the drug treatment. Such facilities may only dispense to patients with legal and applicable Doctor's Prescriptions.

Planned Unit Development: A development of land that is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development often includes a mixture of uses and may include streets, buildings, open spaces, and other site features.

Planning Board: The Planning Board of the Town of Cherryfield, Maine.

Principal Use: The primary use and chief purpose of a lot or structure.

Public and Private Schools: Primary and secondary schools, or parochial schools, which satisfy either of the following requirements: the school is not operated for a profit or as a gainful business; or the school teaches courses of study which are sufficient to qualify attendance in compliance with State compulsory education requirements.

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

Restaurant: An establishment where meals are prepared and served to the public for consumption on the premises and/or where foods and beverages are served directly to occupants of motor vehicles or directly to pedestrian traffic from an exterior service opening or counter, or any combination of the foregoing.

Retail Business: A business establishment engaged in the sale, rental, or lease of goods or services to the ultimate consumer for direct use or consumption and not for resale.

Right-of-way: All public or private roads and streets, State and Federal highways, private ways (now called public easements), and public land reservations for the purpose of public access, including utility rights-of-way.

Road: An existing State, County, or Town way or a street dedicated for public use and shown upon a plan duly approved by the Planning Board and recorded in the County Registry of Deeds or a road dedicated for public use and shown on a plan duly recorded in

the County Registry of Deeds prior to the establishment of the Planning Board and the grant to the Planning Board of its power to approve plans. The term shall also include private, undedicated roads which are described on a recorded document. The term "road" shall not include those ways which have been discontinued or abandoned.

Setback: The minimum horizontal distance from a lot line to the nearest part of a building, including porches, steps, and railings.

Shopping Center: Any concentration of two or more retail stores or service establishments under one ownership or management containing 15,000 square feet or more of gross floor space.

Structure: Anything constructed or erected, the use of which requires a fixed location on or in the ground or in the water, or an attachment to something having a fixed location on the ground, including buildings, billboards, signs, commercial park rides and games, carports, porches, and other building features, including stacks and antennas, but not including sidewalks, fences, driveways, parking lots, and field or garden walls or embankment retaining walls.

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

Telecommunications Towers: Structures without floor area constructed for wireless communications purposes, consisting of antennas, antenna support structures, towers and receivers. Such structures may be required to meet minimum State standards.

Undue Hardship: As used in this Ordinance, the words "undue Hardship" shall mean all of the following:

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

A variance is not justified unless all elements are present in the case.

Use: The manner in which land or a structure is arranged, designed or intended, or is occupied.

Variance: A relaxation of the terms of this Ordinance where such relaxation will not be contrary to the public interest where, owing to conditions peculiar to the property, and not the result of the actions of the applicants, a literal enforcement of the Ordinance would result in undue hardship. Variances permissible under this Ordinance are limited to height of buildings, structures, lot size, yard and open spaces sizes, frontage, and setbacks. No variance shall be granted for the establishment of any use otherwise prohibited, nor shall a

variance be granted because of the presence of non-conformities in the immediate or adjacent districts.

Well Drilling: Well drilling is the high volume extraction of ground water for the purpose of bottling or commercial high volume sale or irrigation. Excluded are residential homes, home businesses, hotels/motels and other business establishments.

Wetland: All coastal and freshwater wetlands. "Coastal Wetlands" are all tidal and sub-tidal lands including all areas below an identifiable debris line left by tidal action, all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity. Coastal wetlands may include portions of coastal sand dunes. Fresh water wetlands are all lands identified by the Department of Inland Fisheries and Wildlife in accordance with Title 38 M.R.S.A. Section 407A, or areas identified by the United States Environmental Protection Agency having jurisdiction under Section 404 of the Clean Water Act.



MIXED USE DISTRICT

20,000 sq. ft. lot size



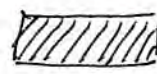
RURAL DISTRICT

40,000 sq. ft. lot size



HISTORIC VILLAGE OVERLAY

20,000 sq. ft. lot size



FLOATING INDUSTRIAL DISTRICT

NOTE: This area is designed to allow for one (1) industrial park complex after which no further industrial development is anticipated

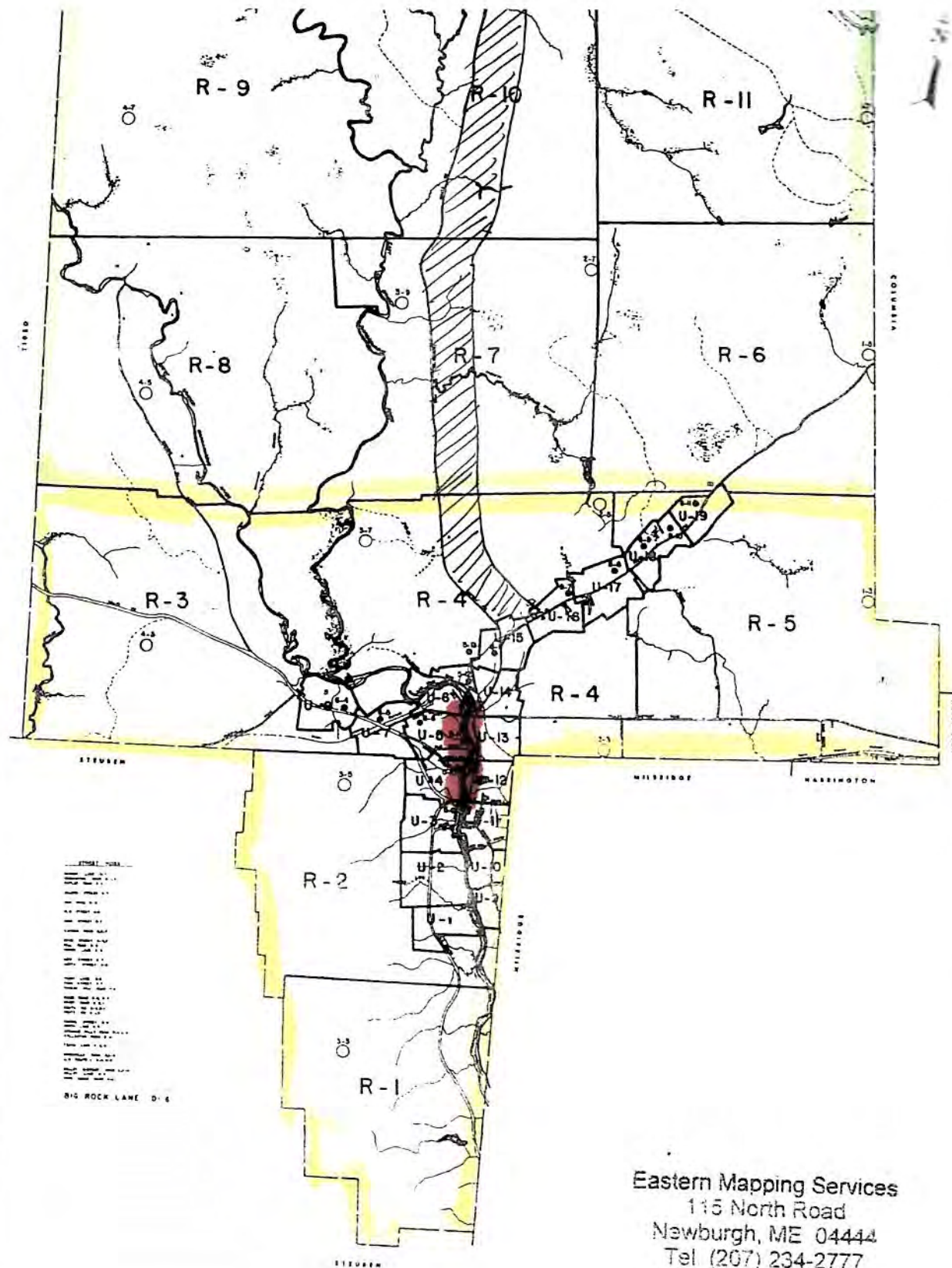
LEGEND

U-1	URBAN	MAP SHEET
	SCALE	1" = 100'
R-1	RURAL	MAP SHEET
	SCALE	1" = 500'
8-4	PHOTO	CENTER
Ø	URBAN	ENLARGEMENT
3-3	PHOTO	CENTER
○	RURAL	ENLARGEMENT

PREPARED BY PHOTOGRAMMETRIC METHODS BY

JOHN E. O'DONNELL & ASSOCIATES
AUBURN, MAINE

1978



PROPERTY MAP
CHERRYFIELD
 MAINE

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