



TOWN OF FALMOUTH ORDINANCE NO 14-2023

Amendments to Subdivision Ordinance and Zoning and Floodplain Management Ordinance

Be it ordained by the Town Council of the Town of Falmouth, Maine in Town Council assembled, that the Falmouth Code of Ordinances Ch. II-7, Sec. 7-2 and Ch. II-19, Div. II-19-1-2 be amended as follows:

PART II CODE OF ORDINANCES

CH. II-7 LAND SUBDIVISION ORDINANCE

Sec. 7-2. Definitions

STREET: Alleys, avenues, boulevards, highways, roads, streets or other traffic ways between right of way lines. Streets are further classified according to the function they perform as provided in Appendix 7-~~54~~ of this Ordinance.

CH. II-19 ZONING AND FLOODPLAIN MANAGEMENT ORDINANCE

Delete the terms “Accessory buildings and uses” and “Accessory buildings and structures” from every zoning district land use table and replace those terms with the term “Accessory structures and uses”.

Div. II-19-1-2. Definitions

Accessory ~~Building~~Structure or Use: A subordinate ~~building~~structure or use customarily incidental to, and located on the same lot with, the main ~~building~~structure or use, such as a garage, workshop, and the like.

Residential Planned Development: A planned, integrated residential development involving detached single-family dwellings, two-family dwellings, ~~multi-family dwellings, or multiplexes~~ or a combination thereof in an architecturally harmonious environment with common access and utility system. [Effective 1/25/88]

Sec. 19.23.2.C Front Setback (Tidewater District)

Single-family and two-family dwelling units from the right-of-way of public streets	20 feet
Single-family and two-family dwelling from the edge of the travelway of private streets	20 feet
Non-residential and mixed use buildings and ~~multiplexes~~ <u>multi-family dwellings</u> from the right-of-way of public streets	None
Non-residential and mixed use buildings and ~~multiplexes~~ <u>multi-family dwellings</u> from the edge of the travelway of private streets	None

Sec. 19-60 Private Ways

The Planning Board may approve the use of a fifty (50) foot private way to provide frontage and/or access to individual lots of land in accordance with the following provisions. For the purpose of this Sec. 19-60, the term "dwelling unit" shall not include accessory dwelling units.:

a. A plan showing the private way shall be prepared by a registered land surveyor. The plan shall be labeled "Plan of a Private Way" and shall provide an approval block for the signatures of the Planning Board members. The plan shall delineate the proposed way and each of the lots and dwelling units to be served by the private way. The plan shall also include a road profile showing existing and proposed conditions.

b. A street plan, cross section, grading plan, drainage plan, and an erosion and sedimentation control plan meeting the requirements of Section 19-72 shall be submitted for each private way serving two (2) or more lots or two (2) or more dwelling units. Submissions of approved plans shall also meet the requirements of Section 19-128.a.5, Geographic Information System (GIS) Plan Submissions and Specifications. [Amended 9/22/03; 3/14/11]

c. The plan shall bear notes that the Town of Falmouth will not be responsible for the maintenance, repair, or plowing of the private way and that further lots or dwelling units divisions utilizing the private way are prohibited without prior approval of the Falmouth Planning Board.

d. If the private way is to provide access to two (2) or more lots or to two (2) or more dwelling units, a maintenance agreement shall be required by the Planning Board and recorded in the Cumberland County Registry of Deeds.

The maintenance agreement shall specify the rights and responsibilities of each ~~lot~~property owner with respect to the maintenance, repair and plowing of the private way.

e. The construction of private ways shall meet the following minimum standards:

	Number of <u>Dwelling Units</u> ~~Lots~~ Served		
	1	2 to 3	4 or more
Minimum Roadway Width	12'*	16'	Same as ~~Local Residential Streets~~ <u>Subdivision Ordinance Appendix 7-5</u>
Minimum Subbase (Heavy Road Gravel)	12"	15"	"

Wearing surface (Fine Gravel)	2"	2"	"
Maximum length of dead end	2000 ¹	1500 ¹	"
Maximum Grade	10%	8%	"
Minimum Grade	0.5%	0.5%	"
Turn around at Dead End	Hammer Head or "T"	Hammer Head or "T"	"
Storm Water Drainage	Approval of Public Works Director		

*One turnout to provide space for 2 vehicles to pass shall be provided for every 500 feet of the private way.

Note 1 – The limitation on the length of a dead end shall not apply to private ways in the Resource Conservation Zoning Overlay District that serve only Country Estate lots. [Adopted 12/22/05]

f. The plan shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.

g. In reviewing requests for approval of private ways under this subparagraph, the Planning Board shall apply such standards and criteria, and may impose such conditions, as are applicable to conditional uses under Sections 19-119 and 19-123 of this Ordinance.

h. The owner or owners shall convey to the Town an easement, described by metes and bounds, for sewer purposes over the entire right of way and shall record the easement in the Cumberland County Registry of Deeds.

i. After a private way plan has been approved by the Planning Board ~~to provide access to a lot or lots~~, no revisions shall be made to any plan, and no further lots or dwelling units shall be ~~created which are to be~~ provided access by means of the private way without the prior approval of ~~the use of the private way for access to such lots by~~ the Planning Board under this subsection.

Sec. 19-67 Placement or Removal of Fill Material [Adopted 7/22/91] [Amended 9/22/03]

Definition of Fill Material: Fill material shall mean clean soil material, rocks, bricks, and cured concrete, which are not mixed with other solid or liquid waste, and which are not derived from an ore mining activity.

The purpose of this provision is to control erosion, protect wetlands, minimize storm water runoff and minimize other nuisances associated with filling and other earth moving activities. It is intended that this provision shall apply to both approved construction for which a building permit has been issued, as well as activities that do not require a building permit.

a. The following guidelines shall govern the placement or removal of fill material in all districts: [Amended, 5/28/96]

1. Normal excavation or removal of fill for which a building permit has been issued, no permit required
2. 0 - 15 cubic yards, no permit required
3. 16 - 1000 cubic yards, CEO permit required
4. over 1000 cubic yards, Planning Board permit required

- b. All activities regulated under this section shall implement erosion and sedimentation control measures as required in Section 19-72. [Amended 9/22/03]
- c. Fill shall not be placed within ten (10) feet of drainage ways, streams or wetland areas without approval by the Planning Board.
- d. Roadways and other public areas shall be kept clean of mud, dirt, debris or other material that may constitute a hazard or nuisance to the public.
- e. Adequate traffic control shall be provided on public roadways to ensure safe access and passage during construction activities.
- f. Submissions of approved plans shall also meet the requirements of Section 19-128.a.5, Geographic Information System (GIS) Plan Submissions and Specifications. [Adopted 3/14/11]
- g. Prior to commencement of site work associated with a Planning Board permit issued under this Sec.19-67, the applicant shall pay an inspection fee as described on a fee schedule approved by Town Council order.

Div. II-19-1-6. NONCONFORMING STRUCTURES, USES AND LOTS

Sec. 19-77 Alterations.

- c. The Board of Zoning Appeals may permit as a conditional use in accordance with Section 19-119 and 19-123, the extension or enlargement of a ~~multiplex~~ two-family dwelling or a multi-family dwelling unit subject to the following requirements [Amended, 10/25/04]:

No part of the extension or enlargement of a two-family dwelling or a multi-family multiplex dwelling unit may be closer than twenty (20) feet from all property lines and thirty (30) feet from dwellings buildings on any adjoining lot.

- a. ~~If the multiplex dwelling to be enlarged is in the condominium or unit owner form of ownership, the Board of Zoning Appeals may approve the extension or enlargement only of a limited common element or area and only after such extension or enlargement has been approved by the condominium association or association of unit owners in accordance with the provisions of the Maine Condominium Act or Unit Ownership Act, as the case may be, and with applicable bylaws of the association.~~
- b. ~~The applicant for the extension or enlargement of a multiplex dwelling unit shall provide notice of the application and the Board of Zoning Appeals' hearing thereon to the owners of dwelling units which are attached to the unit proposed to be extended or enlarged. [Amended 1/24/00]~~

- d. A structure other than a single family detached dwelling, a two-family dwelling, or a multi-family dwelling multiplex dwelling unit which is nonconforming due to lot size, lot width, lot frontage, lot coverage, height or setback requirements, may be expanded or enlarged subject to Site Plan Review under Div. II-19-1-9, provided that the extension or enlargement is not located between the lot lines and the required setback lines, and does not compound nor create a lot coverage or height violation. [Amended 1/24/00][Amended 8/26/13]

Div. II-19-1-7. SHORELAND ZONING

Sec. 19-94 Permits Issued by Planning Board [Adopted 5/26/09]

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

- a. will not result in unsafe and unhealthful conditions;
- b. will not result in water pollution, erosion, or sedimentation to surface waters;
- c. will adequately provide for the disposal of all wastewater;
- d. will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- e. will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- f. will protect archaeological and historic resources as designated in the Comprehensive Plan;
- g. will avoid problems associated with flood plain development and use; and
- h. is in conformance with the Land Use Standards of Div. II-19-1-7.

Prior to commencement of site work, the applicant shall pay an inspection fee as described on a fee scheduled approved by Town Council order.

Div. II-19-1-9. PLANNING BOARD SITE PLAN REVIEW

Sec. 19-127 Site Plan Approval Required [Amended 4/28/03; 8/26/13]

Sec. 19-127.1 Exemptions- ~~The following activities are specifically exempt from site plan review:~~

~~a. Detached single-family dwellings and their accessory buildings and parking access areas; and~~

Any site alterations that occur in conjunction with the Town's implementation of the 2013 Route One South Infrastructure Plan are exempt from ~~site plan review~~~~this section~~ and, further, shall be considered part of and in compliance with previously approved site plans. [Added 5/13/13]

Sec. 19-127.2 Minor Site Plan Approval- The following expansions, additions, replacements, alterations and improvements to previously developed ~~commercial nonresidential~~ or multi-family residential properties meeting the following thresholds may be approved under the Minor Site Plan Approval procedure in Section 19-128.e~~1~~ below. Projects submitted under this section shall require approval by the Community Development Director ~~or designee and the Senior Planner~~. [Added 8/26/13][Amended 2/27/17]

- a. Utility or support structures such as mechanical systems and coolers.
- b. Lighting stanchions and fixtures and changes of location of the same.
- c. Landscaping and screening.
- d. Minor alterations to grading, drainage and stormwater improvements provided they do not have any negative impact on water quality standards or downstream properties. Any improvements under this paragraph require approval by the Town Engineer.
- e. Increase in impervious surfaces of no greater than 4,000 square feet in a ten year period.
- f. Building additions limited to no more than a 50% expansion of the total gross square footage of the existing building or 1,000 gross square feet, whichever is less. Additions shall not exceed a total of 1,000 gross square feet in a ten year period.
- g. New accessory buildings or structures not to exceed 500 gross square feet in any ten year period.
- h. Directional signs on private property. [Adopted 7/24/17]

Sec. 19-128 Site Plan Review Procedure [Amended 3/14/11]

The following procedure shall govern the submission and review of building and site plans. Projects approved under [19-127.2](#), Minor Site Plan Review above shall meet all requirements and procedures in this section unless otherwise noted.

- a. The property owner shall submit to the permitting authority building and site plans in a number and format as determined by the Community Development Department, and such submissions shall include: [Amended 8/27/07; 8/26/13]
 1. Building plans showing, as a minimum, the first floor plan or other outside access plan and all elevations, with indication of proposed buildings and structures and all accessory buildings and structures.
 2. A site plan, drawn to scale of not less than one (1) inch equals forty (40) feet, or a scale acceptable to the Community Development Director or designee~~Senior Planner~~, and prepared by a licensed land surveyor, showing the dimensions and area of each lot or plot to be built upon or otherwise used; the size, shape and location of existing and proposed buildings; the location and layout of parking areas, all parking spaces and driveways, proposed grades and drainage, proposed sewer and water facilities and connections; a landscaping plan including locations of proposed plantings and screenings and buffer areas; proposed locations of fences, signs and advertising features; and a key map showing the entire project, and its relation to surrounding properties and the existing building thereof. The preparation of the plan by a licensed land surveyor may be waived by the Community Development Director or designee~~Senior Planner~~ if they determine that there is adequate dimensional information submitted. [Amended 8/26/13]
 3. Information requested by the permitting authority for determining whether the proposed structure and uses of the site conform to the requirements and objectives of this section, including but not limited to sketch plans or renderings of proposed structures. [Amended 8/26/13]
 4. A signage plan, drawn to scale of one (1) inch equals one (1) foot, or a scale acceptable to the Community Development Director or designee~~Senior Planner~~, showing the elevations, dimensions, color, materials, lettering and other graphics, type of illumination, mounting details, and area of all free standing and wall mounted signs proposed for the site. [Adopted, 4/27/87; 8/26/13]
- d. Planning Board Applications [replaced 8/26/13]
 1. The applicant may request a Preapplication Sketch Plan Review under Sec. [7-7.A.](#), Land Subdivision.
 2. Within forty-five (45) days but not sooner than twenty-one (21) days of the submission of a completed application, with all supporting documentation, the Board shall hold a public hearing.
 3. At least ten (10) days prior to the hearing date, the Community Development Department shall notify by mail the owners of all property within 500 feet of the property for which application is made. For the purposes of this section, the owners of property shall be considered to be the parties listed by the tax assessor for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Board. [Amended 12/22/86; 8/26/13; 01/13/2020]

4. At any hearing, a party may be represented by agent or attorney. Hearings may be continued to other times for good cause as determined by the Planning Board.
5. The ~~Senior Planner or his designated assistant~~Community Development Director or designee may attend all hearings and may present to the Planning Board plans, photographs or other material deemed appropriate for an understanding of the application.
6. The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. All persons at the hearing shall abide by the order of the Chairman.
7. Subsequent to the public hearing, the Planning Board shall reach a decision and inform, in writing, the applicant and the Community Development Director ~~Senior Planner~~ of its decision and its reasons therefore.

Sec. 19-158 Site Conditions [Amended 8/26/13]

- a. During construction, the site shall be maintained and left each day in a safe and sanitary manner and any condition which could lead to personal injury or property damage shall be immediately corrected by the developer upon an order by the Town Engineer, Building Inspector, ~~Senior Planner~~Community Development Director or designee, or other authorized personnel. The developer shall make provision for disposal of oil and grease from equipment and the site area should be regularly sprayed to control dust from construction activity.
- b. 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 Town Engineer, Community Development Director or designee~~Senior Planner~~, or Building Inspector. All the changes necessitated by field conditions shall be shown on the final plan and indicated as a change from the preliminary, or if final approval has been granted, the changes shall be shown on the as-built plans.
- c. Temporary improvements: Prior to or during construction, the Town Engineer, Community Development Director or designee~~Senior Planner~~, or Building Inspector may require the installation or construction of improvements to prevent or correct temporary conditions on the site which could cause personal injury, damage to property or erosion and landslide, flooding, heavy construction traffic, creation of steep grades and pollution. Improvements may include berms, mulching, sediment traps, detention and retention basins, grading, plantings, retaining walls, culverts, pipes, guardrails, temporary roads and others appropriate to the specific condition. All temporary improvements shall remain in place and in operation until otherwise directed by the Town Engineer, ~~Senior Planner~~Community Development Director or designee, or Building Inspector

Attest: _____
Ellen Planer
Town Clerk
July 25, 2022