

**SECTION IV. ADMINISTRATION**

**A. ENFORCEMENT OFFICER**

It shall be the duty of the Building Inspector of the Town of Scarborough to enforce the provisions of this Ordinance. If the Building Inspector shall find that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation(s), indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal changes thereto; discontinuance of any illegal work being done, or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions, including revocation of a previously issued Certificate of Occupancy or Building Permit.

**A-1. ZONING VIOLATION CITATION [12/01/04]**

As an alternative to the notice procedure under Section IV(A) above, the Code Enforcement Officer may issue a written or oral warning that a particular use, structure, activity or practice constitutes a violation of the Zoning Ordinance and that such violation must be discontinued and may not be repeated. If the person receiving the warning fails to discontinue the violation or repeats the violation, then the Code Enforcement Officer shall issue a zoning violation Citation, stating the violation, the minimum and maximum penalties for the violation under Section IV(C) of this Ordinance and the consequences of failure to respond to the Citation. A single Citation may enumerate multiple violations and/or multiple occurrences of a violation. The Citation shall be served on the person responsible for the violation by hand-delivery or by certified mail.

No later than 7 days after service, the person served with the Citation must respond either by paying the minimum penalty stated in the Citation or by notifying the Code Enforcement Officer in writing that he or she intends to contest the Citation by appeal to the Board of Appeals, which appeal must be filed within 30 days of the date of service of the Citation. If the person served with the Citation fails to respond within 7 days, then the violation(s) stated in the Citation and any continuing or repeat violation(s) shall be deemed to be willful, and the Town may seek the maximum penalties set forth in Section IV(C) of this Ordinance and in 30-A M.R.S.A. section 4452. Failure to respond to the Citation within 7 days shall also constitute a waiver of any right to contest the Citation, including any right of appeal to the Scarborough Board of Appeals, and shall enable the Town to immediately commence enforcement action in court.

**B. LEGAL ACTION AND VIOLATION**

When any violation of any provision of this Ordinance including failure to comply with any subdivision or site plan approved by the Planning Board, or condition imposed by the Zoning Board of Appeals shall be found to exist, the Code Enforcement Officer shall notify the Town Manager who may then institute any and all actions to be brought in the name of the Town. The Town Manager shall inform members of the Town Council before instituting action in court, but need not obtain the consent of the Town Council, and the Town Manager may institute an action for injunctive relief without first informing members of the Town Council in circumstances where immediate relief is needed to prevent a serious public harm. In addition, the Town Manger may enter into administrative consent agreements in the name of the Town

## SECTION IV. ADMINISTRATION

for the purposes of eliminating violations and recovering penalties without court action.  
[Amended 12/01/04]

### C. FINES

Any person, firm or corporation being the owner of or having control or use of any building, structure or land who violates any provision of this Ordinance or any condition imposed by the Building Inspector, Planning Board or Board of Appeals pursuant to the provisions of this Ordinance, commits a civil violation and shall be liable for a civil penalty of no less than \$100 and no more than \$2,500 for each violation. Each day such violation is permitted to exist after notification thereof shall constitute a separate violation. All penalties collected hereunder shall inure to the Town of Scarborough.

### D. BUILDING PERMIT

1) No building or structure shall be erected, moved, added to or structurally altered without a permit therefore issued by the Building Inspector. No building permit shall be issued except in conformity with the provisions of this Ordinance and all other applicable ordinances of the Town of Scarborough and any conditions imposed pursuant to said ordinances.

2) No building permit (except permits for single family and two family dwellings) shall be issued except after review by the Fire marshal to determine that all plans for construction comply with applicable statutes, ordinances, codes and regulations promulgated to reduce fire hazards.

3) Notwithstanding the requirements of subparagraphs (1) above, the Code Enforcement Officer may grant a waiver from the yard or maximum building coverage requirements of this Ordinance for the purpose of making a dwelling accessible to a person with a disability who is living on the property or is a regular or occasional visitor to the dwelling. Such waiver may be granted only upon request of the owner of the dwelling. The Code Enforcement Officer shall restrict any such waiver solely to the installation of equipment or construction of structures, including railing, wall or roof systems needed for the safety or effectiveness of the structure, necessary for access to or egress from the property by the person with the disability. Disability under this subparagraph has the same meaning as physical handicap under Title 5, Section 4553 of the Maine Revised Statutes. When the Code Enforcement Officer grants a waiver under this subparagraph, a certificate indicating the name of the property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a waiver, including conditions imposed on the waiver, has been granted and the date of the granting of the waiver shall be signed by the Code Enforcement Officer and recorded by the property owner in the Cumberland County Registry of Deeds within 90 days of the date of approval of the waiver. The waiver is not valid the certificate is recorded and becomes void if the certificate is not recorded within 90 days from the date the waiver is granted. (2/17/93)

### E. APPLICATION FOR BUILDING PERMIT

All applications for building permits shall be accompanied by plans drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings and structures already existing, if any, the location and dimensions of the proposed building structure or alterations and the proposed sewage disposal system as prescribed by the Maine State Plumbing Code and the Scarborough Plumbing Ordinance. The

## SECTION IV. ADMINISTRATION

Code Enforcement Officer may request such additional information including, but not limited to, survey and engineering data, as the Code Enforcement Officer deems necessary to determine whether the applicant's proposal complies with the requirements of this Ordinance, other applicable ordinances of the Town of Scarborough and any conditions imposed pursuant to said ordinances. Whenever the placement of buildings or structures depends upon the accurate location of natural features, including, but not limited to, water bodies, rivers, streams, wetlands, floodplains, soils types and vegetation types, the Code Enforcement Officer may require the applicant to produce written certification of the location of such features from a person qualified by training, experience or (where applicable) licensure to render such certification. [Amended 12/01/04]

In all districts the approval of building permit applications shall be subject to evidence of satisfactory subsurface soils conditions for drainage and sewage disposal. Such evidence shall be furnished by reference to the Soils Map of the Town of Scarborough, prepared by the United States Soils Conservation Services, and on site investigations approved by the Building Inspector. Where poor site conditions are shown to exist, approval of the application shall be subject to the installation of remedial measures, which comply fully with all applicable State and local codes for health, plumbing, sanitation, conservation, and pollution abatement. Soils characteristics shall be based on suitability for use of properly installed disposal systems continuously year round and the following points of consideration shall be made: ground water table, texture, pans, depth, permeability, percolation rate, flooding, slope, effect on ground water, that soils completely handle all free effluent without its return to the surface; extremely stony or very rocky is automatically very poor or unsuitable, high water table slopes of 15% to 25% or greater are rated poor for all soils which are otherwise suited because of likelihood of resurfacing and expense of installation.

### F. SPECIAL PERMITS FOR CONSTRUCTION IN FLOOD HAZARD AREAS

#### 1.) Special Flood Hazard Areas.

Before construction, relocation, replacement, or substantial enlargement or modification of any building has commenced in the special flood hazard area designated on the maps prepared in accordance with the National Flood Insurance Act of 1968, as amended, the owner or lessee, or the architect, engineer, contractor or builder employed by such owner or lessee shall obtain from the Building Inspector a permit covering such proposed work.

#### 2.) Application.

The application for a permit shall be submitted in writing to the Building Inspector and shall include, in addition to the other information required by this section, the following:

- A. The name and address of the applicant and owner;
- B. An address or map indicating the location of the construction site;
- C. A site plan showing location of existing and proposed structure(s), sewage disposal facilities, water supply, areas to be cut and filled, and the lot dimensions.
- D. A statement of intended use of the proposed structure(s);
- E. A statement as to the type of sewage system proposed;
- F. Specifications of dimensions of the proposed structure(s) length, width, and height;

## SECTION IV. ADMINISTRATION

- G. The elevation (in relation to ground and mean sea level) of the lowest floor, including basement, and if the lowest floor is below grade on one or more sides, the elevation of the floor immediately above;
- H. A copy of the plans and specifications of the proposed construction. This requirement may be modified by decision of the Building Inspector when, in his opinion, such information is or is not needed to determine the conformance of the proposed construction with this Ordinance; and
- I. Evacuation plans indicating alternate vehicular access and escape routes shall be filed with the local Disaster Preparedness Authority for mobile home parks or mobile home subdivisions located within Zone A on the Flood Hazard Boundary Map.

### 3.) Fee.

A permit fee shall be paid in such amount as specified in the Schedule of License, Permit and Application Fees established by order of the Town Council. (09/06/95)

### 4.) Review.

The Building Inspector shall review all aforesaid building permit applications to determine whether proposed building sites will be reasonably safe from flooding and ensure that necessary permits have been obtained from governmental agencies. Any construction, relocation, replacement or substantial enlargement or modification of any building, including prefabricated and mobile homes upon building sites in the special flood hazard area must:

A. Be designed or modified anchored to prevent floating, collapse, or lateral movement of the structure. All mobile homes to be placed in Zone Z of Scarborough, Flood Hazard Boundary Map shall meet this requirement by use of over-the-top and frame ties to ground anchors. Specific requirements are:

- (1) over-the-top ties be provided at each of the four corners with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side;
- (2) frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side;
- (3) all components of the anchoring system shall be capable of carrying a force of 4,800 pounds; and
- 4) any additions to the mobile home shall be similarly anchored.

B. Use construction material and utility equipment that are resistant to flood damage;

C. Use construction methods and practices that will minimize flood damage; and

D. Should any proposal subject to this ordinance involve the alteration and relocation of a watercourse, the Building Inspector shall so notify adjacent communities, the State Coordinating Office and the Federal Insurance Administrator prior to taking action, and the flood carrying capacity of the watercourse must be maintained.

## SECTION IV. ADMINISTRATION

### 5.) Plumbing.

The Building Inspector shall require new or replacement water supply systems and sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

### 6.) Records.

The Building Inspector shall maintain a log for public inspection and information of all permit applications and flood proofing measures required.

## G. CERTIFICATE OF OCCUPANCY.

### 1.

(a) It shall be unlawful to use or occupy or permit the use or occupancy of any land, building, structure or part thereof which is created, erected, changed, converted, altered or enlarged, or to change, alter or enlarge the use of any land, building, or structure until a certificate of occupancy is issued therefore by the Building Inspector and endorsed to the effect that the proposed use of the land, building or structure conforms with the requirements of this Ordinance.

(b) Prior to any change in the ownership or tenancy of a building or structure other than a single-family, two-family or multi-family dwelling, the owner of the building or structure (or the prospective new owner or tenant with the written authorization of the owner) shall obtain a new certificate of occupancy. The new owner or tenant shall not occupy the building or structure until it is brought into compliance with the requirements of this Ordinance and of any other applicable law, ordinance, rule or regulation for the use proposed by the prospective new owner or tenant.

2. An applicant for a building permit shall also make application for a certificate of occupancy, which application must be received before a building permit may be issued. Upon completion of the work permitted by the building permit, the Building Inspector shall issue the certificate of occupancy upon finding that the building, structure or land and the use or occupancy thereof comply with the provisions of this Ordinance, with all provisions of any site plans or subdivision plans approved by the Planning Board and with any conditions imposed by the Planning Board or Board of Appeals. The certificate of occupancy shall contain a statement that the building or structure, if constructed in a designated Flood Hazard Area, complies with the requirements of Section IV, F of this Ordinance.

3. A temporary Certificate of Occupancy may be issued by the Building Inspector for a period of six months during construction or alterations for a partial occupancy of a building pending its completion, provided that such temporary Certificate may require such conditions and safeguards as will protect the safety of the occupants and the public. Failure to complete all work per the temporary Certificate of Occupancy shall constitute a violation of this Ordinance.

4. The Building Inspector shall maintain a public record of all Certificates of Occupancy.

5. Failure to obtain a Certificate of Occupancy shall be a violation of this Ordinance. The Certificate of Occupancy shall contain a statement that the building has been flood proofed

## SECTION IV. ADMINISTRATION

when constructed in a designated Flood Hazard Area. Violations of this Ordinance shall be cause for revocation of a Certificate of Occupancy.

H. [deleted August 5, 1992]

### I. SPECIAL EXCEPTION PERMITS.

#### 1. SPECIAL EXCEPTIONS.

Uses designated as Special Exceptions within this Ordinance are intended as potential land uses in the districts in which they are so designated, subject to the issuance of a Special Exception permit by the Board of Appeals in compliance with this Section. Any use which was commenced prior to the effective date of adoption or amendment of this Ordinance and would require a Special Exception permit under the terms of this Ordinance or subsequent amendment is a non-conforming use, and any expansion of such use shall require a Special Exception permit in compliance with this Section.

#### 2. APPLICATION FOR SPECIAL EXCEPTION PERMIT.

When the owner of property or the owner's authorized agent is informed by the Code Enforcement Officer or otherwise determines that a Special Exception permit is required, an application for the permit shall be filed with the Board of Appeals on forms provided for that purpose. The application shall provide all information required for a building permit application under Section IV, D of this Ordinance plus information upon which the Board of Appeals may make findings of fact as to each of the standards set forth in subsection 4 of this Section. The application shall be accompanied by an application fee in such amount as the Town Council may by rule from time to time determine, and shall be heard pursuant to the procedures set forth in Section V, C of this Ordinance.

#### 3. BOARD OF APPEALS REVIEW.

The Board of Appeals shall hear and approve, approve with modifications or conditions, or disapprove all applications for Special Exception permits. The Board may approve a Special Exception permit only for a use which is specifically designated by this Ordinance as a Special Exception in the district where the use will be located. If the Board determines that the proposed use meets all the standards set forth in subsection 4 of this Section and in all other respects complies with the applicable provisions of this Ordinance, the Board must approve the application. If the Board determines that the proposed use can be made to comply with the standards of subsection 4 of this Section by imposition of conditions as provided in subsection 5 of this Section, then it may approve the application with conditions. If the Board determines that the proposed use does not meet one or more of the standards of subsection 4 of this Section and conditions that would cause the use to comply with those standards are not acceptable to the applicant, the Board must deny the application.

#### 4. STANDARDS FOR SPECIAL EXCEPTIONS.

Before it issues a special exception permit, the Board of Appeals shall find, as a matter of fact, that the proposed use meets the following criteria:

- a.** The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.

## SECTION IV. ADMINISTRATION

- b.** The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.
- c.** The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree in municipal fire or police protection than existing uses in the neighborhood.
- d.** The proposed use will not result in sedimentation or erosion, or have an adverse effect on water supplies.
- e.** The proposed use will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, proximity to other structures and density of development.
- f.** If located in a shoreland zone as depicted on the Town of Scarborough Official Shoreland Zoning Map, the proposed use will comply with all of the requirements of the Town of Scarborough Shoreland Zoning Ordinance. (8/5/92)
- g.** The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.
- h.** The applicant has the technical and financial ability to meet the standards of this Section and to comply with any conditions imposed by the Board of Appeals pursuant to subsection 5 of this Section.
- i.** The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

### 5. CONDITIONS ON SPECIAL EXCEPTIONS.

Upon consideration of the standards listed in subsection 4 of this Section, the Board of Appeals may attach such condition, in addition to those required by other provisions of this Ordinance, as it finds necessary to insure compliance with those standards and all other applicable requirements of this Ordinance. Violation of any of those conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation, increased setbacks and yards, specified sewage disposal and water supply facilities, landscaping and planting screens, hours of operation, operation controls, professional inspection and maintenance, sureties, location of piers, docks, parking and signs, and types of construction.

### 6. CONDITIONS REQUIRED ON CHILD AND ADULT DAY CARE FACILITIES [Amended 06/01/94]

- a.** Family Day Care Homes, Group Day Care Homes, Day Care Center Facilities, and Nursery Schools shall comply with the following conditions:
  - i.** Shall provide outdoor play or recreation areas as required by state regulations, which shall be in rear and side yards only;
  - ii.** All outdoor play or recreation areas shall be fenced; if a facility is approved during the winter, fencing shall be installed as soon as weather permits.
  - iii.** Unless authorized by variance under Section V.B.3, such facilities may be located only on lots which comply fully with the minimum lot area and minimum street frontage requirements of this Ordinance, or as follows:

#### SECTION IV. ADMINISTRATION

1. On a nonconforming lot of record in the RFM or RF Districts, the minimum lot area required for a Group Day Care Home is 60,000 square feet and the minimum lot area for a Family Day Care Home is 40,000 square feet.
  2. On a nonconforming lot of record in the R-2 District, the minimum lot area required for a Family Day Care Home is 15,000 square feet, provided the lot is sewered.
  3. On a nonconforming lot of record in the R-3 District, the minimum lot area required for a Family Day Care Home is 10,000 square feet, provided the lot is sewered.
  4. On a nonconforming lot of record in the R-4 District or the R-4A District, the minimum lot area required for a Family Day Care Home is 7,500 square feet, provided the lot is sewered.
  5. On a nonconforming lot of record in any district, the minimum street frontage required for a Family Day Care Home is seventy-five percent of the minimum otherwise required in the district.
- iv. No such facility shall be situated in any location where the distance between the facility's driveway entrance and the driveway entrance of another child or adult day care facility or a home occupation is less than five times the minimum street frontage requirement for the zoning district, measured along the sidelines of streets. Where the facilities subject to this restriction are in different zoning districts with different street frontage requirements, the larger requirement shall apply.
  - v. The owner shall show that the sewage disposal system fully conforms to the requirements of the Maine State Plumbing Code or the requirements of the Scarborough Sanitary District.
  - vi. Prohibited in multiplex housing units.
- b. Group Day Care Homes, Day Care Center Facilities and Nursery Schools shall comply with the following additional conditions:
- i. Access shall be permitted only from streets of higher classification than a local residential street (as defined in the Street Acceptance Ordinance of the Town of Scarborough);
  - ii. Off street parking shall be provided for all non-resident employees.
  - iii. Driveways of childcare facilities must be configured so that vehicles dropping off and picking up children are not required to back up into the driveway or into the street in order to exit the facility. (2/15/95)
- c. In the RFM, RF, and R-2 districts, Nursery Schools and Day Care Center Facilities must provide total lot area which equals or exceeds the sum of the minimum lot area required in the zoning district for the first twelve children plus 800 square feet for each additional child, based on maximum licensed capacity. In all other districts, Nursery Schools must provide total lot area which equals or exceeds the sum of the minimum lot area required in the zoning district for the first twelve children plus 75 square feet for each additional child, based on maximum licensed capacity. (12/21/94)



SECTION IV. ADMINISTRATION

d. A Nursery School or Day Care Center Facility in the Industrial District cannot be located on a lot, which does not have at least one hundred feet of street frontage notwithstanding the space and bulk regulations for that district.

7. STANDARDS APPLICABLE TO GASOLINE FILLING STATIONS – [moved to Section IX.X. PERFORMANCE STANDARDS – GASOLINE FILLING STATIONS -06/20/12]

8. CONDITIONS REQUIRED ON NON-COMMERCIAL MODEL AVIATION FLYING FIELDS. (2/17/93)

**a. Site Restrictions:**

1. Non-Commercial Model Aviation Flying Fields shall be permitted west of the Maine Turnpike.
2. Non-commercial Model Aviation Flying Fields shall be allowed only on sites of 50 acres or larger.
3. Non-commercial Model Aviation Flying Fields are exempt from the Off-Street Parking Regulations of Section XI of this Ordinance. However, an area for parking shall be provided of a size and configuration determined by the Board of Appeals to be sufficient to accommodate the largest number of users anticipated at the field at any one time and to avoid any parking on public roads or any private access roads to the field.
4. Adequate sanitary facilities using “portable” toilets or normal septic systems must be provided.

**b. Operator Restrictions:**

1. All model aircraft flyers using a site must be 18 years of age or older, or directly supervised by someone 18 years of age or older.

**c. Operating Restrictions:**

1. Model aircraft flying may only occur between the hours of 9:00 a.m. to 7:00 p.m. or sunset whichever is earlier.
2. Model aircraft may not exceed a wingspan of 120 inches or exceed a weight of 30 pounds.
3. No model aircraft capable of carrying a person are permitted.
4. No model aircraft may fly past the lot boundaries of the flying site.
5. No model aircraft may come within 500 feet horizontal distance of any residence.
6. No model aircraft shall be flown higher than 400 feet above the ground.
7. No more than three model aircraft may be in the air simultaneously.
8. No individual model aircraft will be permitted to fly which produces a sound level greater than 98 dB measured on the ground at a distance of 15 feet from the engine.
9. Noise produced by model aircraft operation shall not exceed a level of 65 dB measured at the property line.

## SECTION IV. ADMINISTRATION

### J. SPECIAL PERMIT FOR MOBILE HOME CONVERSION

**1.** Notwithstanding any provisions in this Ordinance to the contrary, the Zoning Board of Appeals may, upon written request by the applicant and subsequent to a public hearing held in conformance with the requirements of Section V, C of this Ordinance, issue a Special Permit to allow an existing dwelling to be replaced with an individual mobile home. Such a permit may be issued only after an affirmative finding by the Board of Appeals that:

**a.** The existing dwelling is uninhabitable due to structural deterioration and unsanitary conditions. Such a finding can only be made after reports are received from the Building Inspector, Electrical Inspector, Plumbing Inspector, and Health Officer, which reports shall identify with specificity the structural deterioration and unsanitary conditions observed at the dwelling. Other investigations may be requested by the Board;

**b.** Written evidence has been presented confirming that the applicant has made diligent efforts to obtain financing from local lending institutions, including, where available, federal or state sponsored programs, and that the financing of necessary repairs or replacement with conventional housing cannot be obtained by the applicant; and the applicant is unable to purchase conventional housing for construction at the site; and

**c.** The applicant is the owner in fee of the real estate upon which the mobile home is to be placed, and shall also be the occupant of the proposed mobile home.

**2.** Any Special Permit issued pursuant to this section shall be made subject to the following conditions:

**a.** The structure to be replaced shall be removed or demolished within 30 days after the mobile home is placed on the parcel and ready for occupancy;

**b.** The placement of manufactured (mobile) home shall comply fully with the siting and construction standards of Section XIII of this Ordinance.

**c.** The Special Permit to the applicant is in no way to be construed as passing to heirs by death, or passing by will, gift or sale of property.

**3.** The Board of Appeals shall accept public input prior to making a final decision regarding the application. However, no public comment shall be permitted regarding the applicant's personal finances and financial status. In analyzing the applicant's financial statements the Board shall secure assistance of counsel or other person qualified to advise the Board.

### K. PROVISIONS ON EXPIRATION OF PERMITS.

All permits and approvals issued pursuant to this Ordinance shall expire if construction of the building or structure or commencement of the use is not begun within six months of the date on which the permit or approval was issued. Upon good cause shown, the person or board issuing the original permit or approval may extend its effectiveness for an additional six month.