

ARTICLE 2 DEFINITIONS

Section 1. Meaning of Words

All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future. Words used in the singular shall include the plural. Where so indicated by the text, these definitions also include substantive regulations. Also, whenever the symbol (SZ) is shown, the definition applies to Shoreland Zoning only.

Section 2. Definitions

ABUTTING PROPERTY: Any lot which is physically contiguous with the lot in question even if only at a point and any lot which is located directly across a street or right-of-way. In the case of a condominium development, the condominium association will be considered the owner of abutting property for purposes of notice under this ordinance.

ACCESSORY APARTMENT: An apartment created by converting part of an existing single family detached dwelling or accessory building into a separate dwelling unit containing not more than 650 square feet of total space. See also the performance standards of Article 10, Section 15.

ACCESSORY BUILDING: A detached, subordinate building, the use of which is clearly incidental and related to that of the principal building or use of the land, and which is located on the same lot as that of the principal building or use.

ACCESSORY USE: A use clearly incidental and subordinate to a principal building or use allowed in the district in which it is located, and located on the same lot with such principal building or use. A small wind energy system that meets the requirements of Article 10, Sections 21 of this Ordinance shall be allowed as an accessory use if it primarily produces electrical power for consumption on the same lot or on an adjacent lot under the same ownership as the principal use that will be the primary consumer of the generated electrical power. Parking lots which serve uses permitted in the district need not be located on the same lot as those principal uses; however, such lots shall be reviewed under the minor or major site plan review process, as applicable.

ADULT USE MARIJUANA: Marijuana or marijuana concentrate that is cultivated, manufactured, distributed or sold by a retail marijuana establishment or retail marijuana social club.

ADULT USE MARIJUANA CULTIVATION FACILITY: A facility or an entity licensed to cultivate, prepare and package retail marijuana and to sell retail marijuana establishments and retail marijuana social clubs.

ADULT USE MARIJUANA ESTABLISHMENT: A retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility, or a retail marijuana testing facility.

ADULT USE MARIJUANA PRODUCT: A marijuana product that is manufactured, processed, distributed or sold by a licensed marijuana establishment or a retail marijuana social club.

ADULT USE MARIJUANA PRODUCTS MANUFACTURING FACILITY: A facility or an entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, retail marijuana stores and retail marijuana social clubs.

ADULT USE MARIJUANA SOCIAL CLUB: A facility or an entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises.

ADULT USE MARIJUANA STORE: A facility or an entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers.

ADULT USE MARIJUANA TESTING FACILITY: A facility or an entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products.

AFFORDABLE HOUSING: Decent, safe and sanitary dwelling units that can be afforded by households with annual incomes no greater than 120% of the median household income in non-metropolitan York County, as established by the U.S. Department of Housing and Urban Development. A renter-occupied unit is affordable to such households if the unit's monthly housing costs, including rent and basic utility costs (the costs of heating and of supplying electricity to the unit plus the cost, if any, of supplying public water and public wastewater disposal service to the unit), do not exceed 30% of gross monthly income. An owner-occupied unit is affordable to such households if its price results in monthly housing costs that do not exceed 28% of gross monthly income for principal, interest, insurance, and real estate taxes. Estimates of mortgage payments are to be based on down payments and rates of interest generally available in the area to low and moderate income households.

AFFORDABLE HOUSING COVENANT: Any agreement among one or more owners, one or more tenants of residential real estate and one or more qualified holders, or between one or more owners and one or more qualified holders, or between one or more tenants and one or more qualified holders, that permits a qualified holder to control, either directly or indirectly, the purchase price of residential housing for the primary purpose of providing that the housing remains affordable to lower income and moderate-income households. See also the definition of "qualified holder" in this Article.

AGRICULTURE: The cultivation of the soil, production of crops, and raising of livestock. Unless otherwise indicated, these activities may include:

- (1) animal husbandry, as defined in this Article,
- (2) the processing of goods only to the extent that value is added to items actually grown or raised on the premises or if it is carried out pursuant to a home food manufacturing license from the Maine Department of Agriculture;
- (3) as an accessory use to the principal use of the site for agriculture, the sale of:
 - (a) produce and products actually grown, raised or processed on the premises,
 - (b) fresh produce purchased off-site to supplement sales during the growing season, and agriculturally related products, provided that such produce and products do not occupy more than 25% of the space devoted to retail sales.

For the purpose of this Ordinance, "agriculturally related products" means items produced under a home food manufacturing license from the Maine Department of Agriculture, such as jams and jellies, honey, cheese and dairy products, homemade baked goods, herbs and spices, ice cream, and maple syrup. The allowed retail sales may be in a farm stand or stands in which a total of no more than five hundred (500) square feet are occupied by the sales activity; and

- (4) aquaculture, as defined in this article.

For the purpose of this Ordinance, the keeping of horses and horticulture, are considered to be uses separate from agriculture.

ANIMAL HUSBANDRY: The breeding and raising of livestock for commercial purpose. Animal husbandry does not include a kennel, which is defined separately.

AQUACULTURE: The farming of aquatic organisms such as fish, shellfish and even plants. The term aquaculture refers to the cultivation of both marine and freshwater species and can range from land-based to open-ocean production.

AQUIFER: A geologic unit consisting of rock, gravel, sand, silt, or clay which stores and yields significant quantities of ground water to wells, springs, and streams.

AUTO REPAIR GARAGE: A building in which serviceable motor vehicles are maintained, serviced or repaired.

BASAL AREA: The area of cross-section of a tree stem at 4 ½ feet above ground level and inclusive of bark.

BASEMENT (SZ): Any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level. All other basements shall be defined per the I.R.C. and I.B.C. building codes.

BOAT BUILDING: The construction or fabrication of boats. Boat building, as an activity, and the place in which boat building takes place, are distinct from "marina."

BOAT LAUNCHING FACILITY: A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for the vehicles and trailers.

BOTTLE CLUB: See the definition of drinking place.

BUILDING: Any three-dimensional enclosure by any building materials of any space for any use or occupancy, temporary or permanent, and shall include foundations, swimming pools, and air raid shelters in the ground, as well as all parts of any kind of structure above ground, except fences and field or garden walls or embankment retaining walls.

- (1) "Building" shall include the phrase "manufactured housing unit," as defined in this Section, and the word "structure," unless the context unequivocally indicates otherwise; and
- (2) "Building" shall not include any recreational trailer, that is, a structure designed and constructed to provide temporary living quarters for recreational, camping, travel or other use and is less than four hundred (400) square feet in area.

BUILT, ERECTED: The words "built" and "erected" shall each contain the other and shall include the words "constructed," "reconstructed," "altered," "enlarged," "moved," and any other words of like significance.

BUREAU : State of Maine Department of Conservation's Bureau of Forestry.

BUSINESS OFFICE: A place of business where activities such as bookkeeping, accounting, telephone sales, and telecommunications take place, but where no retail services are performed.

BUSINESS SERVICE: An activity that supplies a direct service to business, including, by way of example, advertising, credit reporting and collection, mailing and reproduction, care of buildings, personnel supply, computer and data processing, market research, and management and public relations.

CAMPGROUND: A plot of ground upon which two or more campsites are located, established, or maintained for occupancy by camping units of the general public as temporary living quarters during the summer season.

CANOPY (SZ): the more or less continuous cover formed by tree crowns in a wooded area.

CEMETERY: Land used for the interment of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

CHANGE OF USE: Any use which differs significantly from the previous use of a building or land. When, in the opinion of the Code Enforcement Officer, there is a question as to whether the change of use differs "significantly" from the previous use, the standard for nonretail uses shall be from a use classified within a given Standard Industrial Classification (SIC) code at the 2-digit level, to another SIC code at the 2-digit level, as defined in the most recent edition of the Standard Industrial Classification Manual.

CHURCH: A place of worship, regardless of denomination.

CLASS OF NONRESIDENTIAL USE: For purposes of determining jurisdiction under Site Plan Review, the classes of nonresidential uses shall be the following categories, as defined by the Standard Industrial Classification Manual: agriculture, forestry and fishing; mining; construction contractors; manufacturing; transportation and public utilities; wholesale trade; retail trade, as further classified at the 2-digit level; finance, insurance, real estate, legal, business service, and miscellaneous professional offices; hotels and other lodging places; personal services; auto-related services; motion pictures, amusement, and recreational services; and health services. Where a proposed use is not explicitly included within one of these categories, the Code Enforcement Officer shall place it into the category in which it appears to be most appropriate.

CLUSTERED RESIDENTIAL DEVELOPMENT: See "Open Space Residential Development."

COASTAL SAND DUNE: Sand deposits within a marine beach system above high tide, including, but not limited to, beach berms, frontal dune ridges, back dune areas and other sand areas deposited by wave or wind action. Coastal sand dunes may extend into coastal wetlands.

COASTAL WETLAND: All tidal and subtidal lands, all areas with salt-tolerant vegetation existing primarily in a saltwater habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Note : All areas below the maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

COMMUNITY BUILDING: A building operated by a fraternal, philanthropic or other nonprofit civic organization or club, used by the organization for its regular meetings and which may be made available from time to time for community functions. Community buildings are distinct from drinking places, which are defined separately.

COMMUNITY LIVING FACILITY: See the definition of Family.

CONDITIONAL ZONING: The process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned.

CONGREGATE HOUSING: See Elderly Congregate Housing.

CONSERVATION PLAN: A plan conforming to the standards of the State Soil and Water Conservation Commission.

CONTRACT ZONING: The process by which the property owner, in consideration of the rezoning of that person's property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties.

CONVALESCENT OR REST HOME OR NURSING HOME: A facility in which nursing care and medical services are performed under the general direction of persons licensed to provide medical care in the State of Maine for the accommodation of convalescent or other persons who are not in need of hospital care, but who do require, on a 24-hour basis, nursing care and related medical services. A convalescent or rest home or nursing home is distinct from elderly congregate housing, which is separately defined in this section.

CROSS SECTIONAL AREA: the cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

CURB CUT: The opening along the curb line or street right-of-way line at which point vehicles may enter or leave the street.

DAY CARE CENTER OR NURSERY SCHOOL: A facility registered with or licensed by the state and that provides care or instruction during the day to three or more children, exclusive of children who may be living in the home that is serving as the day care center or nursery school. The term may also refer to centers that provide day care to the elderly or adults with handicaps.

("See Article 10, Section 20 for performance standard regarding this use")

DBH: the diameter of a standing tree measured 4.5 feet from ground level.

DEVELOPMENT (SZ): a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

DIMENSIONAL REQUIREMENTS: numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

DISABILITY: A physical or mental disability as defined in 5 M.R.S.A. Section 4553-A.

DISRUPTION OF SHORELINE INTEGRITY: the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

DISPOSAL: The discharge, deposit, injection, dumping, spilling, leaking, incineration, or placing into or onto any land or water of any material that may release a harmful leachate to the environment or waters, including ground water.

DRINKING PLACE: An establishment primarily for the sale or dispensing of liquor by the drink. A "nightclub" is a type of drinking place that also offers entertainment. A "bottle club" is a type of drinking place in which patrons bring their own liquor for consumption on the premises.

DRIVE-THRU LANE: Travel lanes associated with drive through facilities and/or drive up windows, and where a customer may make a transaction or receive a service without exiting the vehicle.

DRIVEWAY: A private entrance from a street or right-of-way to a building or buildings on abutting grounds. The driveway itself shall not constitute the means of legal access to a lot along which frontage or lot width may be measured.

DWELLING: Any building or structure or portion thereof designed or used for residential purposes. For the purpose of this Ordinance, the following types of dwellings have specific meanings.

- (1) **SINGLE FAMILY DETACHED DWELLING:** A freestanding building exclusively for residential use by not more than one family. The term shall include manufactured housing, as defined in this section. Where, in this Ordinance, accessory apartments are listed as allowable uses, they shall not be deemed to turn a single family detached dwelling into a two-family dwelling. See also the definition of accessory apartment.
- (2) **TWO-FAMILY DWELLING:** A building used for residential occupancy by two families living independently of each other.
- (3) **MULTIFAMILY DWELLING:** A building used for residential occupancy by three or more families, each living independently of the other. See also the definition of elderly congregate housing.

DWELLING UNIT: A group of rooms within a dwelling designed and equipped as living quarters for a person or for a family, including provisions for living, sleeping, cooking, bathing, and eating. In shoreland zoned areas, this term shall mean a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities regardless of time-period rented.

EATING PLACE: A place for the serving of prepared food and beverages to the public. A "fast food" eating place is an establishment whose primary business is the sale of prepared food which is:

- (1) primarily intended for immediate consumption;
- (2) available upon a short waiting time;
- (3) served over the counter rather than at a table; and
- (4) prepackaged or presented in a manner that it can be readily eaten off the premises where sold.

ELDERLY CONGREGATE HOUSING: A type of dwelling which is occupied by elderly persons and that provides shared community space and shared dining facilities and normally also provides its residents with housekeeping services, personal care and assistance, transportation assistance, recreational activities, and/or specialized shared services such as medical support services. By "elderly" persons is meant a person 60 years old or older, or a couple that constitutes a household and at least one of whom is 60 years old or older at the time of entry into the facility or a disabled or handicapped person as established below. By "shared community space" is meant space designed to be used in common for the enjoyment and leisure of residents of the facility, such as, by way of example only, reading rooms, sitting rooms, recreational rooms, rooms for entertaining guests, and exercise rooms. By "shared dining facilities" is meant a room or rooms designed for the serving of meals to residents sitting together, plus the kitchen and ancillary facilities required to prepare the meals. An elderly congregate housing development shall include

either or both of the following types of residential units:

- dwelling units, as defined by this Ordinance, that is, single housekeeping units with living, sanitary, and sleeping and permanent cooking facilities; and
- residential care units, which do not meet the definition of dwelling unit because they have no cooking facilities within the units, but which normally consist of rooms with sleeping and sanitary facilities.

Additionally, the term elderly congregate housing includes specialized facilities that provide long-term residential care, such as those designed specifically for persons with Alzheimer's Disease or other afflictions of the elderly for which specialized care outside of a nursing home may be appropriate. Elderly congregate housing is distinct from "convalescent or rest home or nursing home," which is defined separately.

A person who meets the definition of "disabled" or "handicapped" as set forth in Section 501(b) of the Housing Act of 1949, the Fair Housing Act, the Americans with Disabilities Act or the Rehabilitations Act of 1973, or in regulations issued by either the United States Department of Housing and Urban Development or the United States Department of Agriculture, Rural Development shall be deemed to meet the elderly congregate housing age requirements of this ordinance and may occupy dwelling units within such elderly congregate housing developments even if that person is not 60 years or older or is not part of a household with another member who is 60 years or older.

ENERGY STAR: Energy Star for Homes Program

ENGINEERED SYSTEM: Any subsurface wastewater disposal system designed, installed and operated as a single unit to treat and dispose of 2,000 gallons of wastewater with combined BOD and total suspended solids concentration greater than 1,400 mg/L.

ENLARGEMENT OR EXPANSION OF A STRUCTURE: An increase of the building footprint and/or increase in the height of the structure beyond its present highest point (see definition of height for an explanation of how the "highest point" is determined). Alterations of existing buildings which are required in order to meet the requirements of the Americans with Disabilities Act (ADA) and/or the State Fire Code are not considered to be enlargements or expansions of a the structures and are not required to meet otherwise applicable setback requirements, provided the alterations are the minimum necessary to satisfy the ADA and/or State Fire Code.

ENLARGEMENT OR EXPANSION OF USE: Any intensification of use in time, volume, or function, whether or not resulting from an increase in the footprint, height, floor area, land area or cubic volume occupied by a particular use. Increases which are required in order to meet the requirements of the Americans with Disabilities Act and/or the State Fire Code are not considered to be enlargements or expansions of use. Also, please note that "change of use" is separately defined in this Article.

ESSENTIAL SERVICES: The following facilities, provided they serve primarily the Town of Kennebunk or a neighborhood or structure within the Town: steam, fuel, gas, communication, emergency service, transportation, electric power, or water transmission or distribution lines and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants, pumping stations, and similar accessories, but shall not include telecommunications facilities or buildings which are necessary for the furnishing of such services. See also the definitions of public utility and telecommunications facilities. Essential services shall not be subject to the space and bulk standards of this Ordinance

FAMILY: One or more persons, including domestic employees, occupying a dwelling unit and living as a single, nonprofit housekeeping unit. A group of five or more persons who are not within the second degree of kinship to each other by blood or marriage, as defined by civil law, shall not be deemed to

constitute a family. However, a community living facility, defined as a state-licensed housing facility for 8 or fewer persons in need of and receiving social services, such as but not limited to mentally handicapped or developmentally disabled persons, living as a housekeeping unit shall also be considered to house a single family.

FOOT-CANDLE: A measure of light falling on a given surface. One foot-candle is equal to the amount of light generated by one candle shining on a square foot surface one foot away.

FOOTPRINT: The total ground floor area of a building, including porches, decks, and cantilevered or similar overhanging extensions and eaves.

FOREST MANAGEMENT: Timber cruising and other forest evaluation activities, management planning activities, insect and disease control, pruning and other stand improvement, regeneration of forest stands, and other similar associated activities, but not the construction of roads or timber harvesting.

FOREST STAND: a contiguous group of trees sufficiently uniform in age, class, distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

FULL CUT-OFF TYPE FIXTURE: A luminary or light fixture that, by design of the housing, does not allow any light dispersion or direct glare to shine above a 90 degree, horizontal plane from the base of the fixture. Full cut-off fixtures must be installed as designed.

FUNCTIONALLY WATER-DEPENDENT USES: Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards, and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

GAS STATION: An establishment where gasoline and other petroleum products are sold principally for use in motor vehicles. The sale of gasoline may not be considered an accessory use, except at marinas if the sale of gasoline for use in motor vehicles is incidental to the sale of fuel for marine purposes.

GREAT POND: Any inland body of water which in a natural state has a surface area in excess of ten (10) acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

GREEN PERIMETER STRIP: A grass or other vegetated strip maintained as an open green space along the entire side, rear, and front yard lines of a lot, not to be built upon, used for drive-thru lanes, parking, or paved, except for entrance or exit driveways. The green perimeter strip shall be located entirely within the boundaries of the lot.

GROUND COVER: small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

GROUNDWATER: All of the water found beneath the surface of the ground. For purposes of aquifer protection, this term refers to the subsurface water present in aquifers and recharge areas.

HALF STORY: That portion of a building below a sloping roof where there is more than five feet vertically between the floor and the underside of the rafters with no greater than half of the usable floor area below.

HARVEST AREA: the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

HAZARDOUS MATERIAL: Any gaseous, liquid or solid materials or substances designated as hazardous by the United States Environmental Protection Agency and/or the Maine Department of Environmental Protection.

HEALTH SERVICE FACILITY: An out-patient establishment furnishing medical services to humans, including the offices of physicians, dentists, and other health practitioners, clinics, medical laboratories, outpatient surgery, and blood banks.

HEIGHT: Vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, watertowers, belltowers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings, provided such accessory features are not for human habitation, and provided that such features shall not exceed a total height of fifty-five (55) feet, except in the case of any church steeple above its cage or belltower, and except for such building accessory features in the Suburban Commercial, Business Park, and Industrial Districts. A separate definition of "height" applying to telecommunications facilities is included in Article 7, Section 4 Telecommunications Facilities and a separate definition applying to Small Wind Energy Systems is included in Article 10, Section 21.

(SZ Note): For shoreland zoning purposes, the height of a structure is defined as the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

HISTORIC DISTRICT: A geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and designated by the Ordinance as appropriate for historic preservation. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

HISTORIC LANDMARK: Any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history as may be designated in accordance with this Ordinance.

HISTORIC SITE: Any parcel of land of special significance in the history of the Town and its inhabitants, or upon which a historic event has occurred, and which has been designated as such in accordance with this Ordinance. The term shall also include any improved parcel, or part thereof, on which is situated a historic landmark, and any abutting improved parcel, or part thereof, used as and constituting part of the premises on which the historic landmark is situated as may be designated in accordance with this Ordinance.

HOME OCCUPATION: Any occupation or profession (including retail sales unless otherwise specified) which is carried on in a dwelling or a building accessory to the dwelling; which is carried on by a member(s) of the family residing in the dwelling; and which is clearly incidental and secondary to the use

of the dwelling for residential purposes and does not change the character thereof. See also the performance standards of Article 10, Section 14, for home occupations.

HORTICULTURE: The cultivation of fruits, vegetables, flowers, and plants, including orchards, commercial greenhouses and nurseries, and landscaping services.

HOSPITAL: An institution providing health services primarily for inpatients and medical or surgical care of the sick or injured, including, as an integral part of the institution, such related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices.

HOTEL: See the definition of Lodgings.

HYDRIC OR WETLAND SOIL: Hydric or wetland soils are poorly drained or very poorly drained soils and shall be determined in accordance with the definition and listing provided by the U.S. Soil Conservation Service publications entitled "Hydric Soils of Southern Maine 1986" and "Hydric Soils of the State of Maine 1985," which soils shall include, but not be limited to, the following: Atherton, Aurelie, Biddeford, Brayton, Burnham, Charles, Chocorua, Easton, Fredon, Gouldsboro, Halsey, Kennebunk, Lyme, Medomak, Monarda, Mooselauke, Naskeag, Ossipee, Peachum, Rifle, Roundabout, Rumney, Scantic, Searsport, Sebago, Swanton, Swanville, Togus, Vassalboro, Washburn, Waskish, and Whately. At the request of the Planning Board, Code Enforcement Officer, or Conservation Commission, identification of hydric soils shall be assisted by a qualified soil scientist at the expense of the landowner utilizing a soil survey, if necessary, meeting the standards of the National Cooperative Soil Survey and the standards set forth in the U.S. Soil Conservation publication entitled "Standards for High Intensity Soil Surveys--Maine," as the same may be amended from time to time.

INLAND OR FRESHWATER WETLAND: Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands usually include swamps, marshes, bogs, and similar areas.

Implicit in this definition are three parameters which characterize most wetlands and which must be present per the 1987 Federal Manual for Identification and Delineation of Jurisdictional Wetlands:

- the land supports a plant community dominated by wetland or aquatic vegetation, and
- undrained hydric (wetland) soils are present, and
- the soil is generally saturated at or near the surface for one (1) week or more during the growing season.

At the request of the Planning Board, Site Plan Review Board, Conservation Commission, or Building Inspector, identification of wetlands shall be assisted by a qualified biologist, botanist or wetland scientist at the expense of the applicant.

INN: See the definition of lodgings.

KENNEL: An establishment operated as a business to house dogs or other domesticated animals and where such animals are groomed, bred, boarded, trained, or sold.

LAND MANAGEMENT ROAD: a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

LEACHABLE MATERIAL: Liquid or solid materials that are capable of releasing harmful contaminants to the groundwater.

LEED: refers to the United States Green Building Council's (USGBC) residential green building rating system entitled "Leadership in Energy and Environmental Design"

LICENSED FORESTER: a forester licensed under 32 M.R.S.A. Chapter 76.

LIMITED MANUFACTURING: The production of goods, in which not more than four persons are employed and the products manufactured are principally for retail sale on the premises.

LODGING: An overnight accommodation with sleeping arrangements provided for a fee. For the purposes of this Ordinance, the following types of lodging have specific meanings:

HOTEL OR MOTEL: A building or group of buildings built or converted to accommodate for a fee travelers who are staying for a limited duration. A hotel or motel may include restaurant facilities where food is prepared and meals served to its guests and other customers. A motel is distinguished from a hotel only in that the sleeping rooms of a motel are accessed from the exterior of the building or from exterior hallways, parking is typically adjacent to the sleeping rooms, and occupancy is oriented to the automobile traveler.

INN: A single building containing fewer than 20 sleeping rooms and built or converted to accommodate for a fee travelers who are staying for a limited duration. An inn may provide dining services to its guests and may host special functions, such as weddings, but does not include a restaurant to serve the public at-large, unless restaurants (eating places) are otherwise allowed in the district.

RENTING OF ROOMS AND FURNISHING OF BOARD: The provision of rooms for rent in a building of residential character, which is used principally as a one-family dwelling, in which the family or person residing permanently in the home acts as proprietor, and in which meals may be taken. This definition includes uses sometimes known as Bed and Breakfasts and which otherwise meet the standards of this definition.

LOT: An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or deeds of record, or a segment of land ownership defined by lot boundary lines on a land division plan duly approved by the Planning Board. For additional legal provisions pertaining to lots, see Article 13, Section 3, of this Ordinance.

LOT COVERAGE: The percentage of gross lot area covered or occupied by principal and accessory buildings.

LOT FRONT: On any lot bounded on more than one side by a street, the lot "front" shall be the street boundary designated "lot front" in any building permit application for such lot.

LOT FRONTAGE: The dimension between the two sidelines of a lot, measured along the property line that borders upon whatever way serves as legal access to the lot. The following ways shall constitute legal access to a lot: (a) a way accepted by or established as belonging to the Town, the County, or the State; (b) a way shown on an approved subdivision plan; or (c) an unaccepted street existing prior to the original enactment of the Town's subdivision regulations provided it is shown on a plat recorded in the registry of deeds prior to such enactment and is deemed adequate as a street by the Planning Board as evidenced by its endorsement on the subdivision plan. Where a lot is situated on a curve of a street or on a corner of two streets, the measurement of frontage may include the entire length of the property line along such street or streets.

LOT OF RECORD: A parcel of land described in a deed or shown on a subdivision plan approved by the Planning Board, either of which must have been recorded in the York County, Maine, Registry of Deeds, and must have met zoning requirements at the time it was created and recorded.

LOT WIDTH: The width of any lot other than a lot used for a multifamily dwelling shall be measured wholly within the lot at the required front yard depth, except in those lots which widen to the rear, in which case the lot width shall be measured at a depth not greater than fifty (50) feet along a line parallel to a straight line connecting the intersections of the front lot boundary with the lot side lines. A lot for a multifamily dwelling must meet the lot width requirement at the street line and throughout the first one hundred (100) feet of depth of said lot.

MANUFACTURED HOUSING UNIT: Structures, transportable in one or two sections, which were constructed in a manufacturing facility and are transported to a building site and designed to be used as dwellings when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

MANUFACTURING: The mechanical or chemical transformation of materials or substances into new products, either finished or semi-finished for use as raw material in another process, and including the assembling of component parts, the manufacturing of products, and the blending of materials. The term also includes repair services, exclusive of motor vehicles, where such services are performed in a facility larger than a tradesman's shop, as defined in this Ordinance.

MARINA: A water-dependent facility that makes available to members of the public space for berthing water craft. The facility also may store, service, supply, and fuel water craft and may sell boats and related equipment.

MARINE SALES AND SERVICE: A facility for the retail sale and repair of water craft and related equipment and supplies.

MARIJUANA: The leaves, stems, flowers and all seeds of all species of the plant genus cannabis, whether growing or not.

MARIJUANA CONCENTRATE: The resin extracted from any part of the plant genus cannabis and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including hashish. In determining the weight of marijuana concentrate, the weight of any other ingredient combined with marijuana to prepare a marijuana product may not be included.

MIXED RESIDENTIAL AND COMMERCIAL USE: The use of a lot or structure for both residential and nonresidential uses permitted within the district.

MOBILE HOME PARK: A parcel of land under unified ownership designed and/or used to accommodate three or more manufactured housing units.

MOBILE HOME PARK LOT: An area of land on which an individual manufactured housing unit is situated within a mobile home park and which is reserved for use by the occupants of that unit. The Planning Board shall require that all mobile home park lots are delineated on a mobile home park plan.

MOTEL: See the definition of Lodgings.

MOTOR VEHICLE SALES AND SERVICE: The use of any building or land area for the display and sale of new or used automobiles, trucks, vans, trailers, recreation vehicles, motorcycles, or similar motorized vehicles, and including repair facilities for such vehicles.

MULTIFAMILY LOT: Any lot containing three or more dwellings. Multi-family lots may contain a combination of single family, two family and/or multi-family dwellings and shall conform to the standards applicable to multifamily dwellings.

MUNICIPAL USE: A use undertaken or a building occupied by a local governmental body, agency or organization or by a quasi-municipal agency or organization carrying out a recognized public purpose.

MUSEUM: An institution for the acquisition, preservation, study, and exhibition of works of artistic, historical, or scientific value.

NET DEVELOPMENT AREA (OR NET LOT AREA): The net area of a parcel of land usable for determining the maximum allowable density of a site. Net area shall be determined by subtracting the following from the gross site area:

- (1) The area located within the full width of the right-of-way of any proposed public or private street or access drive. If a right-of-way is not delineated, an area equal to a minimum 50' R-O-W shall be deducted.
- (2) Any portion of the site which is cut off from the main portion of the site by an existing road.
- (3) Any land area which is regularly covered by water, including lakes, ponds, rivers, oceans, or intertidal areas.
- (4) Any land area identified as having soil that is very poorly drained, alluvial, or flood plain according to a soils scientist utilizing accepted scientific methods, and in accordance with the classifications of the National Cooperative Soil Survey.
- (5) Any land area identified as inland, freshwater or coastal wetland, as defined herein.
- (6) Any land located within utility easements or rights-of-way, if the restrictions preclude use of the land for development and do not allow easement area to be used by the property owner for lawns, driveways, parking, patios or other removable features which are permitted by easement holder.

NET RESIDENTIAL DENSITY: The net residential density shall be determined by dividing the net development area by the minimum net lot area required in the zoning district in which the project is located.

NGBS: refers to the National Association of Home Builders' residential green building standard

NIGHTCLUB: See the definition of drinking places.

NONCONFORMITIES: Buildings, parcels of land, and the uses thereof which fail to meet the current requirements of this Ordinance but which were lawful at the time of adoption or subsequent amendment of this Ordinance and which are allowed to continue as lawful pursuant to the provision of Article 5 of this Ordinance. See additional definitions in Article 5, Section 2.

NONRESIDENTIAL FACILITY FOR EDUCATIONAL, SCIENTIFIC, AND NATURE INTERPRETATION PURPOSES: A structure containing not more than 500 square feet of total floor area associated with a natural, historic, or similar resource to provide information about the resource.

NONTIDAL OR INLAND WATERS: Waterbodies and watercourses not affected by tidal action.

NORMAL HIGH WATER MARK OF TIDAL WATERS, NONTIDAL (INLAND) WATERS, AND

COASTAL WETLANDS: That boundary between:

- (1) land with predominantly wetland or aquatic vegetation and land with predominantly terrestrial vegetation; or
- (2) soil that is predominantly hydric and soil that is predominantly nonhydric.

Where there is both wetland vegetation and hydric soils, the higher boundary shall be used. Areas

contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high water are considered part of the river or great pond. Note: Adjacent to tidal waters, setbacks are measured from the upland edge of the coastal wetland.

NURSING HOME: See Convalescent or rest home or nursing home.

OCCUPANT: The person, corporation, or organization in actual use and control of the business, commerce or service available in given premises, any technical divisions among such activities notwithstanding.

OFF-ROAD VEHICLES: A motor-driven, off-road, recreational vehicle capable of cross-country travel on land, snow, ice, marsh, swampland or other natural terrain. For purposes of aquifer protection, off-road vehicle does not include a logging vehicle used in performance of its common functions, a farm vehicle used for farming purposes, or a vehicle used exclusively for emergency, law enforcement, or fire control purposes.

OPEN SPACE, COMMON: Land within a development which is essentially unimproved and set aside as permanent open space in a manner prescribed by Article 9, Section 10, Open Space Standards, of this Ordinance.

OPEN SPACE PLAN: A working document outlining policies for preserving and protecting open space lands in the Town, adopted as part of the Kennebunk's Comprehensive Plan on 11/2/2004.

OPEN SPACE PLAN PRIORITY AREAS: Those areas identified on the Environmental Priorities Map (Figure 7), the Recreation Priorities Map (Figure 8) and the Town Character Priorities Map (Figure 9) of the Kennebunk Open Space Plan adopted as part of the Kennebunk's Comprehensive Plan on 11/2/2004.

OPEN SPACE RESIDENTIAL DEVELOPMENT or OPEN SPACE SUBDIVISION: An alternative form of residential development to the conventional residential subdivision, in which the buildings are clustered or grouped on one portion of the site with the remaining portion of the site permanently preserved as open space. The terms of open space residential development are governed by Article 9, Open Space Zoning, of this Ordinance. All open space residential developments in addition shall be subject to subdivision regulations and approvals.

OUTDOOR RECREATION: See Recreation.

PERENNIAL STREAM: A free flowing body of water (ie. a river, brook, or tributary) which runs year-round as depicted on the most recent USGS 7.5 minute topographic maps.

PERMANENT FOUNDATION: Means the following:

- (1) A full, poured concrete or masonry foundation;
- (2) A poured concrete frost wall or a mortared masonry frost wall, with or without a concrete floor;
- (3) A reinforced, floating concrete pad. If the pad is to be placed on soil rated with a high potential for frost action on the Soil Interpretation Records of the U.S. Soil Conservation Service, the Code Enforcement Officer shall require a certification of its adequacy from a professional engineer, registered in the State of Maine, prior to the issuance of building permit; or
- (4) Any permanent foundation which, pursuant to the building code of the Town of Kennebunk, is permitted for other types of single family dwellings.

PERSONAL SERVICE: Establishments primarily engaged in providing services involving the nonmedical care of a person or of his or her apparel, as exemplified by beauty shops, barber shops, shoe repair, photographic studios, coin-operated laundries, fitness studios, and similar establishments.

PETROLEUM: Oil, gasoline, petroleum products and their byproducts, and all other liquid hydrocarbons, excluding propane.

PIER (OR DOCK OR WHARF): A platform extending from a shore over water and supported by piles or pillars, or floating upon the water, and used to secure, protect, and provide access to boats or other water-based activity. A permanent pier, dock, or wharf is one in which the structure or any part thereof is in place for more than seven (7) months during any calendar year. This definition also includes uses defined as Boat Launching Facilities.

PORTLAND ROAD CORRIDOR: is defined as the area delineated (by tax map/lot numbers) on the Figure A map titled Portland Road Corridor Map, dated 2/2008.

PORTLAND ROAD TRAFFIC MANAGEMENT STUDY: Shall mean the Portland Road Traffic Management Study of the Town of Kennebunk (dated November 1997) and updated March 2008 by Maine Traffic Resources.

PRINCIPAL BUILDING: A structure or, where the context so indicates, a group of structures in or on which is conducted the primary use of the lot on which such structure is located.

PROFESSIONAL OFFICE: The office of a person engaged in architecture, engineering, law, medicine, dentistry, or other activity in which specialized services to clients are performed by persons possessing a degree from a recognized institution of higher learning demonstrating successful completion of a prolonged course of specialized intellectual instruction and study, or its equivalency, and also possessing evidence of professional capability, such as membership in a professional society.

PUBLIC UTILITY: Facilities for the delivery of such public services as water, electricity, telephone, gas, and transportation, whether publicly or privately owned, which are regulated by such agencies as the Maine Public Utilities Commission, the Maine Department of Transportation, the Federal Communications Commission, or the Federal Aviation Administration, and which are intended to serve primarily populations or activities outside of the Town of Kennebunk. This term also includes buildings, other than those housing pumping stations, which are necessary for the furnishing of essential services, as defined in this Ordinance, whether local or greater in scope. This term does not include telecommunications facilities which are defined separately.

QUALIFIED HOLDER: A governmental entity empowered to hold an interest in real property under the laws of Maine or the United States or a nonprofit organization whose purposes include the provision of affordable housing or the increasing of affordable housing opportunities for lower income or moderate-income households, including governmental or quasi-governmental entities such as public housing authorities, community action agencies, or other similar nonprofit or governmental entities committed to providing opportunities for lower income or moderate-income households to obtain affordable housing.

RECENT FLOOD PLAIN SOILS:

Alluvial	Cornish	Charles
Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

RECHARGE AREA: Area composed of permeable, porous material through which precipitation and surface water infiltrate and directly replenish the Branch Brook aquifer.

RECREATION: An activity pursued for leisure in order to refresh mind or body, or a facility designed or equipped for such pursuit. For the purposes of this Ordinance, the following related terms have specific meanings:

AMUSEMENT PARK: A park operated by an entity other than a unit of government, with a predominance of outdoor games and activities for entertainment, including motorized rides, water slides, miniature golf, batting cages, and the like. Amusement parks are not an allowed use in Kennebunk, provided that this shall not prohibit the temporary operation of activities common to amusement parks that are part of festivals, promotional functions, and the like, if licensed or specially permitted by the Board of Selectmen.

FULLY ENCLOSED PLACE OF RECREATION: A place enclosed by walls, roof, and floor, designed and equipped for the conduct of indoor sports, leisure time activities, and other customary and usual recreational activities, and operated by an entity other than a unit of government. These include, by way of example only, skating rinks, gymnasias, bowling alleys, video arcades, and the like. For the purposes of this Ordinance, theaters are treated as a separate use. Fitness studios are included under the term "personal services."

OUTDOOR RECREATION: Outdoor recreation activity operated by an entity other than a unit of government, whether operated for profit or not, including but not limited to golf courses, ball fields, parks and playgrounds, livery, and ski-tows, provided they fulfill State and Town public health requirements, but not including campgrounds, outdoor movies, outdoor dine and dance facilities, or games and activities common to amusement parks as described in the definition of amusement park. Regardless of whether outdoor recreation is listed as a permitted use or a use allowed by special exception in a given district, recreational improvements are allowed if required by the Planning Board as part of subdivision approval. Such improvements include, but are not limited to, multi-use ball fields, playground structures for children, unpaved trails used for pedestrians and non-motorized vehicles, provided they do not result in the creation of impervious surface.

RENTING OF ROOMS AND FURNISHING OF BOARD: See the definition of lodgings.

RESEARCH AND DEVELOPMENT FACILITY: A laboratory or other facility for carrying on investigation in the natural, physical, or social sciences, or engineering and development of end products as an extension of such investigation. Such a facility does not engage in the manufacture or sale of products, except as incidental to the main purpose of research and investigation.

RETAIL SALES: The sale of goods or commodities directly to the consumer or other end user. For the purposes of this Ordinance, the term retail sales shall include salesrooms or showrooms, but not motor vehicle sales, either new or used, gas stations, or eating places.

Further, the phrase "low-volume retail" refers to stores that generate an average of less than 100 trip-ends per 1,000 gross square feet per weekday, as reported by the latest edition of "Trip Generation," published by the Institute of Transportation Engineers. If a proposed retail use is not listed in this publication or if the Code Enforcement Officer is unable to otherwise categorize a proposed use, he may request the applicant to document trip generation through industry data, a traffic engineer, or similarly qualified source.

RIGHT-OF-WAY: A street or other area over which is given legal right of passage. A public right-of-way is a way dedicated to the use of the public and accepted by the Town or other level of government.

SALT MARSH: Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

SALT MEADOW: Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three square occurs in fresher areas.

SALT-TOLERANT VEGETATION: Includes, but is not limited to, the following: salt meadow cordgrass (*Spartina patens*); salt marsh cordgrass (*Spartina alterniflora*); salt grass (*Distichlis spicata*); salt marsh goldenrod (*Solidago sempervirens*); sea blite (*Suaeda maritima*); glasswort (*Salicornia sp.*); orach (*Atriplex patula*); sandwort (*A. arenaria*); silverweed (*Potentilla norvegica*). At the request of the Planning Board, Code Enforcement Officer, or Conservation Commission, identification of salt-tolerant vegetation shall be assisted by a qualified biologist, botanist or wetland scientist at the expense of the landowner.

SCHOOL, PUBLIC AND PRIVATE: A place or institution for teaching and learning, which place or institution teaches courses of study sufficient to qualify attendance there as being in compliance with State compulsory education requirements.

SCHOOL, COMMERCIAL: A place or institution for teaching and learning, which place or institution is established for commercial or profit-making purposes, including, by way of example only, schools for dance, music, riding, gymnastics, photography, driving, or business.

SETBACK: See "Yard."

SETBACK (SZ): the nearest horizontal distance from the normal high-water line of a waterbody or tributary stream, or upland edge of a coastal or freshwater wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

SHORELAND FRONTAGE: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot side lines with the shoreline.

SHORELINE: the normal high-water line, or upland edge of a freshwater or coastal wetland.

SIGN: Any object, device, display or structure, or part thereof which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.

(Refer to Article 10, Section 7, Signs, for a complete listing of performance standards and definitions relating to the placement of signs in the Town of Kennebunk.)

SKID ROAD or SKID TRAIL: a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

SLASH: the residue, e.g., treetops and branches, left on the ground after a timber harvest.

SLUDGE: Residual materials produced by industrial processes, water or sewage treatment processes, or domestic septic tanks.

SMALL WIND ENERGY SYSTEM: A wind energy conversion system consisting of a wind turbine, a tower, footings, electrical infrastructure, fence and any other associated equipment or structures, which has a rated capacity of not more than 50 kilowatts and which is intended to produce electrical power primarily for on-site consumption.

SOLID WASTE: Useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing. This includes, but is not limited to, rubbish, garbage, scrap materials, junk, and refuse.

SPECIAL EXCEPTION: A use which would not be appropriate without restriction but is acceptable if controlled as to number, area, location, and relation to the neighborhood, and meeting the criteria of Article 7 of this Ordinance.

STORAGE: A space for the keeping of goods, commodities, or supplies, and in which there is no or only incidental and occasional other activity, such as sales, manufacturing, production, repair, or office functions.

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

STREAM: a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

STREET: Any vehicular way within the Town, including any private vehicular right-of-way which connects to a public vehicular right-of-way. The term "street" is distinct from the term "driveway," which is defined separately in this section.

STUDIO OF ARTISANS: A building or portion of a building used as a place of work by an artist, photographer, or person similarly skilled in the production of a particular product. Unless otherwise indicated, a studio may include the retail sale of items produced on the premises.

SUBDIVISION: As defined by MRSA Title 30-A, Sec. 4401.4 as the same may be amended from time to time (a copy of the most recent language is available from the Planning Department).

SUMMER CAMP: A campground for the accommodation of children or other organized groups for educational or recreational purposes during the summer season. The term is distinct from campgrounds generally and does not include parks for recreational vehicles.

TELECOMMUNICATIONS FACILITY: Shall mean any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services. Telecommunications Facility shall be considered a principal use.

TESTING FACILITY: A facility, whether within a laboratory or freestanding, whose primary purpose is the testing of products for conformance to industrial specifications or to public regulations. Such facilities include, by way of example only, assaying services, automobile and emissions testing services, calibration and certification services, and food testing services. A testing facility within a building primarily devoted to manufacturing shall be considered accessory to the manufacturing.

THEATER: A facility operated by an entity other than a unit of government for the showing of motion pictures or for dramatic or musical performances.

TIDAL WATERS: Lands or water areas upon which tidal action occurs during the maximum spring tide per NOAA monthly Kennebunkport tide charts

TIMBER HARVESTING: The cutting and removal of trees from their growing site, for the primary purpose of selling or processing forest products and the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery, including the creation and use of skid trails, skid roads, and haul roads. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Article 10, Section 10.3.D, Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

TRADESMAN SHOP: An establishment occupied by a craftsperson or a person in a skilled trade, including, by way of example only, plumbing, carpentry, or electrical work. The term also shall include establishments engaged in the repair of electrical goods and appliances, watches, jewelry, equipment, furniture, or other goods, exclusive of motor vehicles, where such services are the primary use and not accessory to another use, such as retail sales. The shop may include work space, storage space, and office space, but may not exceed 2,000 square feet of total floor area.

TRIBUTARY STREAM: means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

U. RATIO: The ratio of average illumination to minimum illumination.

UNIFORM SETBACK RELATIONSHIP TO THE STREET: An established uniform setback relationship to a street is deemed to exist when the two lots on either side of the subject lot front on the same street and when the front yard setback of each of these four lots does not vary from the average of all four front yard setbacks by more than five feet.

UPLAND EDGE OF A COASTAL WETLAND: The line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action.

UPLAND LIMIT OF AN INLAND OR FRESHWATER WETLAND: That boundary between:

- (1) land with predominantly wetland or aquatic vegetation and land with predominantly terrestrial vegetation; or
- (2) soil that is predominantly hydric and soil that is predominantly nonhydric; or
- (3) in the case of wetlands without wetland vegetation or wetland soil, land that is saturated with water or covered with shallow water at least two months during each year and land that is not saturated with water or covered with shallow water at least two months each year. Where there is both wetland vegetation and hydric soils, the highest boundary shall be used. In places where the said upland limit cannot be accurately determined, i.e., due to ledges or erosion, said upland limit can be estimated from the nearest locations where wetland vegetation or hydric soil occurs.

VARIANCE: A relaxation of the terms of this Ordinance where such relaxation will not be contrary to the public interest, and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance will result in undue hardship. As used in this Ordinance, and unless otherwise specifically indicated, a variance is authorized only for the space and bulk requirements of Article 8 and the performance standards of Article 10, pursuant to the procedure and standards contained in Article 6 of this Ordinance.

VETERINARY CLINIC: A facility where animals or pets are given medical or surgical treatment, and the boarding of animals is short-term and incidental to the medical care.

WASTEWATER DISPOSAL SYSTEM: Any system designed to collect and/or treat wastewater, including but not limited to: treatment tanks, leach fields, holding tanks, chemical toilets, and wastewater discharge systems licensed under Title 38, Maine Revised Statutes Annotated, Section 414, as the same may be amended from time to time.

WATERBODY: Any great pond, as herein defined, river, stream or tidal area.

WATERCOURSE: Any stream, brook, creek or river, whether containing freshwater or saltwater.

WATER CROSSING: any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, driveways, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

WETLAND OR AQUATIC VEGETATION: Those species termed "hydrophytic," and determined in accordance with the definition and listing provided in the U.S. Fish and Wildlife Service publication entitled "Wetland Plants of the State of Maine 1986," which vegetation shall include, but not be limited to, the following: cordgrasses (*Spartina* sp.); sedges (*Carex* sp., *Scirpus* sp., and *Eleocharis* sp.); rushes (*Juncus* sp.); cattails (*Typha* sp.); willows (*Salix* sp.); alders (*Alnus rugosa*); red maples (*Acer rubrum*); pondweeds (*Potamogeton* sp.); smartweeds (*Polygonum* sp.); sensitive fern (*Onoclea sensibilis*). At the request of the Planning Board, Code Enforcement Officer, or the Conservation Commission, identification of wetland vegetation shall be assisted by a qualified biologist, botanist or wetland scientist at the expense of the landowner.

WHOLESALE SALES: Trade that involves the sale of merchandise, in bulk or large quantities, to retailers for resale or to industrial, commercial, or institutional users.

WINDFIRM: the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking and major breakage.

YARD, FRONT: An open space extending the entire width of a lot from lot sideline to lot sideline and extending in depth at a right angle from the street boundary of such lot to such depth as specified. Such front yard is unoccupied and unobstructed by any building from the ground upward.

YARD, REAR: An open space extending the entire width of a lot from sideline to sideline and extending at a right angle from the rear line of such lot such depth as specified. Such rear yard is unoccupied and unobstructed by any building from the ground upward.

YARD, SIDE: An open space extending along each sideline of a lot between the front yard and the rear yard on such lot and extending at a right angle from the sideline of such lot to such depth as specified. Such side yard is unoccupied and unobstructed by any building from the ground upward.