

**Draft amendments to CH. II-7 (Subdivision Ordinance)**  
**Introduction: 1/25/2021 Council Meeting**

**PART II CODE OF ORDINANCES**  
**CH. II-7 LAND SUBDIVISION**

---

**Sec. 7-1. Authority, Purpose and Application of Regulations**

---

Under the authority of ~~30-A M.R.S.A. Title 30, §§ 4401-4407~~Section 4956, including all acts in amendment thereof and in addition thereto, and any other enabling laws, this *Subdivision Ordinance* of the Town of Falmouth is hereby adopted to encourage the most appropriate use of land; to promote traffic safety; to provide safety from fire and other elements; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in unsanitary areas; to provide an adequate street system; to promote the coordinated development of unbuilt areas; to provide for adequate public services; to assure the comfort, convenience, safety, health and welfare of the people; to protect the environment and to promote the development of an economically sound and stable community.

**Sec. 7-2. Definitions**

~~**EXEMPTED LOTS:** Lots which are exempted from subdivision review by State law. However, resale of exempted lots within five years of the approval date for a subdivision to others who would not be exempted under State Law shall constitute a re-subdivision.~~

**SUBDIVISION:** The division of a tract or parcel of land into 3 or more lots within any 5-year period, ~~which period that~~ begins on or after September 23, 1971, in accordance with 30-A M.R.S.A. § 4401(4) and as that subsection may be amended from time to time. ~~This definition applies whether the division is accomplished by sale, lease, development, buildings, or otherwise, except when the division is accomplished by devise, condemnation, order of court, or gift to a relative, unless the intent of such gift is to avoid the objectives of this section, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for purposes of this section. In determining whether a parcel of land is divided into 3 or more lots, land retained by the subdivider for his own use as a single family residence for a period of at least 5 years shall not be included. No sale or lease of any lot or parcel shall be considered as being a part of a subdivision of such a lot or parcel is 40 acres or more in size, except where the intent of such sale or lease is to avoid the objectives of this statute.~~ The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

**SUBDIVISION, MINOR:** Any subdivision not exceeding five 5 lots and not exceeding 5 dwelling units, in which all of the lots front on a way accepted by the Town of Falmouth and further provided that all lots shall meet the minimum area and lot width requirements of the zones in which they are located. A minor subdivision shall also include a private way plan meeting the standards of Appendix 7-5, Section (D) 3. of this Subdivision Ordinance.

### Sec. 7-3. Guidelines

When ~~promulgating any subdivision regulations and where~~ reviewing any subdivision for approval, the Planning Board shall consider the following criteria, and, before granting approval, shall must determine that: ~~the proposed subdivision:~~

- a. ~~The proposed subdivision W~~will not result in undue water or air pollution. In making this determination, it shall at least consider: the elevation of land above sea level and its relation to the flood plains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources rules and regulations.
- b. ~~The proposed subdivision H~~has sufficient water availability ~~city~~ for the reasonably foreseeable needs of the subdivision.
- c. ~~The proposed subdivision W~~will not cause any unreasonable burden on an existing water supply, if one is to be used/tilized.
- d. ~~The proposed subdivision W~~will not cause unreasonable soil erosion or a reduction ~~in~~ the land's capacity ~~of the land~~ to hold water so that a dangerous or unhealthy condition ~~may~~ results.
- e. ~~The proposed subdivision W~~will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section.
- f. ~~The proposed subdivision W~~will provide for adequate ~~solid and~~ sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.
- g. ~~The proposed subdivision W~~will not cause an unreasonable burden on the municipality's ability ~~of a municipality~~ to dispose of solid waste, ~~and sewage~~ if municipal services are to be utilized.
- h. ~~The proposed subdivision W~~will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- i. ~~The proposed subdivision Is in conformance~~conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any. In making this determination, the planning board may interpret these ordinances and plans. ~~and~~
- j. The subdivider has adequate financial and technical capacity to meet the ~~above-stated~~ standards of this section.

k. Whenever situated ~~entirely or partially, in whole or in part,~~ within the watershed of any pond or lake or within 250 feet of any wetland, great pond, lake, or river as defined in Title 38, chapter 3, subchapter 1, article 2-B, or tidal waters, the proposed subdivision will not adversely affect the quality of ~~such that~~ body of water or unreasonably affect the shoreline of ~~such that~~ body of water.

l. The proposed subdivision ~~W~~will not, alone, or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

m. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

n. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

o. All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district.

p. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.

q. The proposed subdivision will provide for adequate storm water management.

r. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.

s. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorous concentration during the construction phase and life of the proposed subdivision.

t. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

u. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the planning board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The planning board may request technical assistance from the Department of Agriculture,

Conservation and Forestry, Bureau of Forestry to determine whether a rule violation has occurred, or the planning board may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If the planning board requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. The bureau shall provide a written copy of its finding and determination to the planning board within 30 days of receipt of the planning board's request. If the bureau notifies a planning board that the bureau will not provide assistance, the planning board may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township, or plantation owned by one person or a group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to Title 12, section 8869, subsection 14.

In addition to determining compliance with the guidelines a-1 above, the Planning Board shall also consider the compliance of the proposed subdivision with the General Requirements of Appendix 7-1.

The Planning Board shall issue an order denying or granting approval of the proposed subdivision or granting approval upon such terms and conditions as it may deem advisable to satisfy the criteria listed in this section, and to protect and preserve the public's health, safety and general welfare. In all instances, the burden of proof shall be upon the person proposing the subdivision.

## **Sec. 7-7. Major Subdivision [Amended 12/22/05]**

### **E. Final Plan Procedures**

8. The Planning Board shall, within sixty (60) days from submission of the Final Plan, approve, modify and approve or disapprove the Final Plan. The reasons for any modification required or the grounds for disapproval shall be stated upon the records of the Planning Board. Failure of the Planning Board to act within such sixty (60) days period shall constitute disapproval of the Final Plan. Approval by the Planning Board shall be endorsed in writing on each final plan with the date of such approval and the signature of the majority of the Planning Board members.

~~The Final Plan shall then be filed with the Falmouth Town Clerk no later than ninety (90) days from the date of approval. Failure to record within the specified time shall be cause for a new review of the plan.~~

9. The plot plan shall be on ~~mylar~~ white paper with a minimum weight of 20 pounds and shall be recorded with the Cumberland County Registry of Deeds no later than ninety (90) days from the date of approval. Failure to record within the specified time shall be cause for a new review of the plan.

## **Sec. 7-8. Minor Subdivisions**

### **A. Procedure**

~~4. The plot plan shall be on mylar and shall be recorded with the Cumberland County Registry of Deeds no later than ninety (90) days from the date of approval. Failure to record within the specified time shall be cause for a new review of the plan.~~

~~45.~~ The approval of the Planning Board of a minor subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement or other open space shown on the plan.

No minor subdivision plan shall be given final approval by the Planning Board until all the required changes and modifications as required by this Ordinance are made a part thereof. Approval by the Planning Board shall be in writing and signed by a majority of the Board. ~~A copy of the approved plan shall be filed with the Code Enforcement Officer within ten (10) days from the date of approval.~~ The plot plan shall be drawn on white paper with a minimum weight of 20 pounds mylar with India Ink and shall be recorded with the Cumberland County Registry of Deeds no later than 90 days from the date of approval. Failure to file record within 90 days shall be cause for a new review of the plan. The Planning Board may require a performance guarantee in accordance with Section 7-11 of this Ordinance.

## Appendix 7-1 General Requirements

---

In reviewing ~~applications for the~~ any subdivision ~~for approval of land~~, the Board shall consider the following general requirements. In all instances the burden of proof shall be upon the person proposing the subdivision.

## Appendix 7-5 Street Standards

---

D. Private Streets and Reserve Strips:

2. Private streets may be approved by the Planning Board if they meet the street standards set forth in this ordinance, except that subdivisions ~~of~~ with fewer than 56 lots and fewer than 6 dwelling units or less may be approved with unpaved private streets, provided that all other design requirements are met, and the plan contains a note to the effect that the Town cannot accept the street until it is brought into conformance with all street standards.
3. Minor subdivisions containing fewer than 34 lots and fewer than 4 dwelling units or less may be approved with unpaved private ways, providing that all design requirements of Section 19-60 of the Zoning and Site Plan Review Ordinance are met. Private ways are not, however, permitted in major subdivisions as a means to create additional rear lots.