

§ 120-812. Performance standards and approval criteria.

The following criteria shall be used by the Planning Board or Staff Review Committee in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board or Staff Review Committee determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant who shall produce evidence sufficient to warrant a finding that all applicable criteria have been met.

- A. Utilization of the site. The plan for the development shall reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities shall be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers shall be maintained and preserved to the maximum extent. Natural drainage areas shall also be preserved to the maximum extent. The development shall include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.
- B. Vehicular traffic. **[Amended 4-9-2019 by Order 19-053]**
 - (1) Adequacy of road system. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development.
 - (a) Intersections on arterial streets within a half mile of any entrance road which are functioning at a level of service D or better prior to the development shall function at a minimum at level of service D after development. If any such intersection is functioning at a level of service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety. A development not meeting this requirement may be approved if the applicant demonstrates that:
 - [1] A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or
 - [2] The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
 - (b) Existing streets and intersections that can be expected to carry traffic generated by the development shall have the capacity or be suitably improved to accommodate that traffic. For the purposes of this section, "suitably improved" shall mean that all of the existing private ways in the road network back to the closest public street

shall meet the applicable street construction standard (see Article 3, definition of "street classification," and Appendix B, Street Design and Construction Standards¹).

- (2) Access to the site. Vehicular access to and from the development shall be safe and convenient.
 - (a) Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards. (See standards for curb cuts in Article 5, Performance Standards.)
 - (b) Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.
 - (c) The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of 50 feet, from the intersection.
 - (d) The intersection of any access/egress drive or proposed street shall function at a level of service of D following development if the project will generate 1,000 or more vehicle trips per twenty-four-hour period.
 - (e) Where a lot has frontage on two or more streets, the primary access to and egress from the lot shall be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.
 - (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
 - (g) Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
 - (h) The following criteria shall be used to limit the number of driveways serving a proposed project:
 - [1] No use which generates less than 100 vehicle trips per day shall have more than one two-way driveway onto a single roadway. Such driveway shall be no greater than 40 feet wide.
 - [2] No use which generates 100 or more vehicle trips per day shall have more than two points of entry from and two points of egress to a single roadway. The combined width of all accessways shall not exceed 60 feet.
 - [3] The Planning Board or Staff Review Committee may limit a development to one point of ingress/egress onto Routes 302, 35 and 115.
- (3) Accessway location and spacing. Accessways shall meet the following standards:

1. Editor's Note: Appendix B is included as an attachment to this chapter.

- (a) Private entrances/exits shall be located in accordance with Table 2 in Appendix B, Street Design and Construction Standards.² This requirement may be reduced if the shape of the site does not allow conformance with this standard. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (b) Private accessways in or out of a development shall be separated by a minimum of 75 feet where possible.
 - (c) Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.
- (4) Internal vehicular circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
- (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles. If the project is to be served by tractor-trailer delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.
 - (b) Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
 - (c) The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
 - (d) All roadways shall be designed as follows:
 - [1] To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion.
 - [2] By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction.
 - [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all-season emergency access, snow storage, and delivery and collection services.
 - (e) Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.
- C. Parking and loading requirements. **[Amended 4-27-2010 by Order 10-075; 3-8-2011 by Order 11-037; 8-25-2015 by Order 15-122; 6-12-2018 by Order 18-099]**

2. Editor's Note: Appendix B is included as an attachment to this chapter.

- (1) Off-street parking layout.
 - (a) Parking areas with more than two parking spaces shall be arranged so that it is not necessary for vehicles to back into the street.
 - (b) All parking spaces, access drives, and impervious surfaces shall be located at least five feet from any side or rear lot line, except where a parking lot is shared between two adjoining properties, or where standards for buffer strips require a greater distance. No parking spaces shall be located within five feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding 24 feet in width.
 - (c) Parking stalls and aisle layout shall conform to the standards in Table 1 of this subsection.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9' 0"	0' 0"	18' 0"	24' 0" two-way
60°	8' 6"	10' 6"	18' 0"	16' 0" one-way only
45°	8' 6"	12' 9"	17' 6"	12' 0" one-way only
30°	8' 6"	17' 0"	17' 0"	12' 0" one-way only

- (d) In parking lots utilizing a parking angle of 90°, 30% of the spaces shall be created with a stall width of 10 feet zero inches and a stall depth of 20 feet zero inches. Remaining spaces shall be created with a stall width of at least nine feet zero inches and a stall depth of at least 18 feet zero inches.
- (e) In lots utilizing diagonal parking, the direction of proper traffic flow shall be indicated by signs, pavement markings or other permanent indications and maintained as necessary.
- (f) Parking areas for nonresidential uses shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double-stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.
- (g) Provisions shall be made to restrict the overhang of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.
- (h) Parallel parking spaces may be used along internal driveways or accessways. Stall width and depth shall be at least nine feet by 20 feet.
- (i) Automobile storage. The parking space dimension requirements in § 120-812C(1)(c) to (g), above, do not apply to vehicles stored for display, sale or repair. However, the operator of the use shall demonstrate that there is enough land area to accommodate all vehicles within any setbacks or required buffer areas of § 120-812C(1)(b) and/or the applicable zoning district. (See Article 4, Zoning

Districts.)

(2) Minimum off-street parking space requirements.

- (a) No minimum number of parking spaces are required, unless otherwise specified under this chapter or Chapter 185. The applicant should demonstrate that the number of spaces provided on-site will meet the needs of the anticipated uses on the property. Shared parking arrangements are encouraged.
- (b) Off-site parking. Parking spaces may be located off-site if the spaces will adequately serve the principal use for which the spaces are required. In making this determination, the Planning Board, Staff Review Committee, or Code Enforcement Officer, as applicable, shall consider the following factors:
 - [1] Proximity of the off-street parking.
 - [2] Ease of pedestrian access to the off-site parking.
 - [3] Provision of sidewalks or paths between the off-site parking and the principal use.
 - [4] The applicant has sufficient legal interest in the land on which the off-site parking is provided to establish control as long as the use exists.
 - [5] Adequate lighting shall be installed to provide for safe pedestrian movement.

D. Pedestrian traffic. The site plan shall provide for a system of pedestrianways within the development appropriate to the type and scale of development. This system shall connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system shall be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect with amenities such as parks or open space on or adjacent to the site.

E. Stormwater management.³

- (1) Adequate provisions shall be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater management plan, which shall not have adverse impacts on abutting or downstream properties.
 - (a) Stormwater management systems for minor and major site plans shall detain, retain, or result in the infiltration of stormwater from the twenty-four-hour storms of the two-year, ten-year, and twenty-five-year frequencies such that the peak flows of stormwater from the project site do not exceed the peak flows of stormwater prior to undertaking the project. The Planning Board may waive the flooding standard in accordance with the following criteria:
 - [1] Insignificant increases in peak flow rates from a project site. When requesting

3. Editor's Note: See also Ch. 201, Stormwater Management.

a waiver for a project resulting in an insignificant increase in peak flow rates from a project site, the applicant shall demonstrate that insignificant increases in peak flow rates cannot be avoided by reasonable changes in project layout, density, and stormwater management design. The applicant shall also demonstrate that the proposed increases will not unreasonably increase the extent, frequency, or duration of flooding at downstream flow controls and conveyance structures. In making its determination to allow insignificant increases in peak flow rates, the Planning Board shall consider cumulative impacts.

- (b) The applicant shall demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow of a minimum twenty-five-year storm without adverse effects, including but not limited to flooding and erosion of drainage channels and shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation. The Staff Review Committee or Planning Board may require capacity for a storm of greater than 25 years due to soil, topographic, or other factors that affect stormwater drainage.
- (c) All natural drainageways shall be preserved at their natural gradients and shall not be filled or converted to a closed system unless approved as part of the site plan review.
- (d) The design of the stormwater drainage system shall provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
- (e) The design of the storm drainage systems shall be fully cognizant of upstream runoff which shall pass over or through the site to be developed and provide for this movement.
- (f) Major site plans, regardless of size, shall submit a stormwater management plan that complies with Section 4C(2) and Section 4C(3) of the General Standards of the DEP Chapter 500, Stormwater Management, as amended.⁴
- (g) Major and minor site plan projects located within the Highland Lake watershed shall also meet the following standards: **[Amended 5-22-2018 by Order 18-905]**

[1] Projects in the Highland Lake watershed must include a stormwater plan designed to meet the standards of DEP Chapter 500, Section 4D, Phosphorous standards.⁵ The option to pay the compensation fee for exceeding the parcel's phosphorus allocation is not allowed in this watershed. Notwithstanding 1 M.R.S.A. § 302, this amendment shall be applicable to and shall govern any application for site plan approval that did not receive lawful final approval by, and so was pending on or at any time after, September 5, 2017, regardless of whether that application was a pending proceeding under 1 M.R.S.A. § 302.

4. Editor's Note: See 06-096 CMR Ch. 500.

5. Editor's Note: See 06-096 CMR Ch. 500.

- (2) Mineral extraction stormwater management plan compliance. Any person owning, operating, leasing or having control over stormwater management facilities required by a stormwater management plan approved as part of a mineral extraction operation in accordance with Article 6 of this chapter shall demonstrate compliance with that plan as follows: **[Amended 4-9-2019 by Order 19-053]**
- (a) A qualified third-party inspector hired by that person shall, at least annually, inspect the stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved stormwater management plan.
 - (b) If the stormwater management facilities require maintenance to function as intended by the approved stormwater management plan, that person shall take corrective action(s) to address the deficiency or deficiencies.
 - (c) A qualified third-party inspector hired by that person shall, on or by May 1 of each year, provide a completed and signed certification to the enforcement authority, in a form provided by the Town of Windham, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by approved stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities, and, if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by approved stormwater management plan, the person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

F. Erosion control. **[Amended 5-23-2023 by Order No. 23-092]**

- (1) All building, site, and roadway designs and layouts shall harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity shall be kept to a minimum. Parking lots on sloped sites should be terraced to avoid undue cut and fill and/or the need for retaining walls. Natural vegetation shall be preserved and protected wherever possible.
- (2) An erosion control plan shall show the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping. Erosion and Sedimentation Control. BMPs shall be designed, installed and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP Documents:
 - (a) Maine DEP Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers.
 - (b) Maine Erosion and Sediment Control Practices Field Guide for Contractors.

- (c) Applicants are required to utilize contractors who are certified in erosion control through the Maine Department of Environmental Protection's Voluntary Contractor Certification Program.

G. Water supply provisions.

- (1) The development shall be provided with a system of water supply that provides each use with an adequate supply of water.
- (2) If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Portland Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

H. Sewage disposal provisions. The development shall be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code.

- (1) All sanitary sewage from new or expanded uses shall be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation.
- (2) If the public collection system is not at the lot line, but can be extended in the public right-of-way, the collection system shall be extended by the owner and the new or expanded use connected to the public system. Such extension shall be required if the public system is within 100 feet of a new use with a design sewage flow of less than 500 gallons per day or within 300 feet of a new use with a design sewage flow of 500 or more gallons per day and the system has adequate capacity to accommodate the additional flow. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system shall occur if and when the subsurface system needs to be replaced.
- (3) If the public system cannot serve or be extended to serve a new or expanded use, the sewage shall be disposed of by an on-site sewage disposal system meeting the requirements of the Subsurface Waste Water Disposal Rules.⁶
- (4) When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.
- (5) Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not

6. Editor's Note: See 10-144 CMR Ch. 241, Maine Subsurface Waste Water Disposal Rules.

limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The pretreatment standards shall be determined by the Portland Water District.

- I. Utilities. The development shall be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility facilities shall be screened from view to the extent feasible. Utility lines shall be placed underground.
- J. Groundwater protection. The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.
- K. Water quality protection. All aspects of the project shall be designed so that:
 - (1) No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface waters or groundwater so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.
 - (2) All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials shall meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's Office.
 - (3) If the project is located within the direct watershed of a body of water most at risk from development, as identified by the Maine Department of Environmental Protection (DEP), the following standards shall apply: **[Added 3-26-2019 by Order 19-020]**
 - (a) If the project does not require review under Chapter 500 of the Maine DEP Stormwater Law,⁷ the Planning Board may require a phosphorus control plan. The plan shall be submitted to the Town for review by an appropriate third-party reviewer at the applicant's expense.
- L. Hazardous, special, and radioactive materials.
 - (1) The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies.
 - (2) No flammable or explosive liquids, solids or gases shall be stored in bulk above the ground unless they are located at least 75 feet from any lot line, or 40 feet in the case of underground storage. All materials shall be stored in a manner and location which is in

7. Editor's Note: See 06-096 CMR Ch. 500.

compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

M. Shoreland relationship.

- (1) The development shall not adversely affect the water quality or shoreline of any adjacent water body.
- (2) The plan shall meet the requirements of Chapter 185, Shoreland Zoning, where applicable.

N. Technical and financial capacity.

- (1) Financial capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination, the Planning Board or Staff Review Committee shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development.
- (2) Technical capacity. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed site plan. In determining the applicant's technical ability, the Planning Board or Staff Review Committee shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant. A violation for the purposes of this article includes any order, consent decree or consent agreement with which the applicant, owner or proposed operator of the facility is not currently in full compliance. **[Amended 4-9-2019 by Order 19-053]**

O. Solid waste management. The proposed development shall provide for adequate disposal of solid wastes. All solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

P. Historic and archaeological resources. If any portion of the site has been identified as containing historic or archaeological resources, the development shall include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

Q. Floodplain management. If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site shall be consistent with the Town's floodplain management provisions.⁸

R. Exterior lighting. The proposed development shall have adequate exterior lighting to provide for its safe use during operating hours.

- (1) Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or

8. Editor's Note: See Ch. 82, Floodplain Management.

which would impair the vision of a vehicle operator on adjacent roadways.

- (a) Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or pedestrians or from adjacent dwellings and so that they do not unnecessarily light the night sky.
- (b) Direct or indirect illumination shall not exceed 0.5 footcandle at the lot line or upon abutting residential properties.

(2) Wiring to light poles and other exterior light fixtures shall be underground.

S. Noise.

(1) The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall be measured at least four feet above ground at the closest occupied structure not owned or under the control of the owner or operator of the proposed development or use.

Sound Pressure Level Limits Using the Sound Equivalent Level of One Minute (leq 1) [Measured in dB(a) Scale]		
Abutting Use	7:00 a.m. to 10:00 p.m.	10:01 p.m. to 6:59 a.m.
Residential	55	45
Residential located in a commercial or industrial district	65	55
Public, semipublic and institutional	60	55
Vacant or rural	60	55
Commercial	65	55
Industrial	70	60

- (2) Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI S1 4-1961) "American Standards Specification for General Purpose Sound Level Meters."
- (3) No person shall engage in construction activities on a site abutting any residential use between the hours of 10:00 p.m. and 6:00 a.m.
- (4) These standards shall not apply to the temporary use of such machinery as chain saws, lawn mowers and snowmobiles.

T. Storage of materials.

- (1) Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.
- (2) All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. The dumpster or receptacle shall be screened by fencing or landscaping.

- (3) Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition.