

## ARTICLE 11 ADMINISTRATION & ENFORCEMENT PROCEDURES

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### Section 11.1 Administrative Permits

#### 11.1.1 Zoning Permits

##### A. Applicability

1. Prior to the construction, reconstruction, change of use, enlargement, extension, moving or structural alteration of any building, and prior to any occupancy or use or change in use of any land, building or other structure or part thereof, an application for a Zoning Permit shall be submitted to the Zoning Enforcement Officer.
2. If the Zoning Enforcement Officer determines that the proposed building or other structure or use is in compliance with these Regulations, he/she shall issue a Zoning Permit.
3. However, no such permit shall be issued for the construction, reconstruction, change of use, enlargement, extension, moving or structural alteration to any building requiring approval of the Planning and Zoning Commission, Zoning Board of Appeals, and/or the Inland Wetlands Commission until such approvals have been granted by said Commissions and Boards.
4. Application for a Zoning Permit shall be applied for and submitted to the Zoning Enforcement Officer prior to submittal of a building permit application.

##### B. Change of Use

The change of use of an existing use of land, buildings, or structures, or part thereof, to another proposed use which is allowable in the applicable zoning district shall be subject to the provisions of this Section for the issuance of a Zoning Permit in the same manner as a new building, structure, or use.

1. Where a change of use does not constitute a substantial change to the use of the property, a Zoning Permit may be issued by the Zoning Enforcement Officer. It shall be the responsibility of the Zoning Enforcement Officer to determine whether or not a change of use will result in substantial site changes.
2. When it is determined that a change of use will require some substantial site changes, the Zoning Enforcement Officer shall refer said applicant to the Commission for their formal review of the application.

See Section 3.12.4 for Change of Nonconforming Use.

##### C. Application Requirements

An application for a Zoning Permit shall be accompanied by the following as applicable to the particular proposal:

1. A plot plan submitted in duplicate, drawn to a scale not to exceed 1"=20', based on the Town of Portland Assessor's Maps and showing all of the following information:
  - a. Name of applicant and property owner;

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- b. The area of the lot, and the dimensions of all lot lines and proposed and existing grades;
  - c. Street address and assessor's map and lot numbers;
  - d. North arrow and graphic scale;
  - e. The height, dimension, use, floor area, ground coverage and location of all buildings and other structures;
  - f. The locations, area and dimension of off-street parking and loading spaces, driveways, easements, and rights-of-way;
  - g. Dimensions of all setback lines observed by buildings and structures;
  - h. The location of any on-site sewage disposal system and water supply well;
  - i. Signs and other facilities and improvements that are subject to the provisions of these regulations;
  - j. Any wetlands, watercourses and special flood hazard areas;
  - k. When located in a Special Flood Hazard area, include existing and proposed site grades, contours and elevations, base flood elevation data, top of foundation elevation, finished floor elevation and any proposed watercourse relocation;
  - l. Soil erosion and sedimentation control plan; and
  - m. Such additional information as may be necessary to determine compliance with the provisions of these regulations.
2. A certified A-2 plot plan, prepared by a licensed land surveyor and/or professional engineer, containing all information required in Section 1, above, submitted with an application for a Zoning Permit for any new dwelling or commercial building, for any new detached structure 850 square feet in area or larger, and for any addition to an existing detached structure which will result in an area of 850 square feet or larger if the proposed location of the structure is within 5 feet of required front, side and/or rear yard setbacks. The Planning Director or the Zoning Enforcement Officer may waive the A-2 plot plan requirements to allow a partial A-2 survey for critical property lines only in cases where an A-2 survey of the entire property is deemed not practical and/or is not needed to determine conformity with these regulations.
  3. A Site Plan as specified in Section 10.5 Site Plan Standards and Procedures;
  4. Building and floor plans as specified in Section 10.5 Site Plan Standards and Procedures;
  5. A copy of the recorded variance, Special Permit Certificate and/or Wetland Permit;
  6. Verification of local health authority approval; and
  7. Such additional information that the Zoning Enforcement Officer deems necessary to determine compliance with the provisions of these Regulations. Additional information required may include certification from a licensed land surveyor verifying installation of property boundary pins, staked limits of tree clearing, and the installation of conservation easement markers.

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## 11.1.2 Foundation Verification

The applicant shall submit a certified A-2 "as-built" plot plan to the Zoning Enforcement Officer within 14 days after completion of foundation footings, columns, piers or walls for verification of setback lines for any new dwelling, for any new detached structures 850 square feet in area or larger, and for any addition to an existing detached structure which will result in an area of 850 square feet or larger, if the proposed location of the structure is within 5 feet of required front, side and/or rear yard setbacks.

## 11.1.3 Certificate of Zoning Compliance

- A. Prior to the issuance of any certificate of occupancy by the Building Official, an application for a Certificate of Zoning Compliance shall be submitted to the Zoning Enforcement Officer. If the Zoning Enforcement Officer determines the building or other structure, use and/or site work is in compliance with an approved Zoning Permit, Site Plan or special permit and with these Regulations, he/she shall issue a Certificate of Zoning Compliance. Failure to comply with all conditions of an approved plan or with these Regulations will cause a delay in the issuance of a Certificate of Zoning Compliance.
- B. Performance bonds may be accepted by the Zoning Enforcement Officer for site improvements, such as landscaping, which cannot be completed because of seasonal weather conditions. The Town Engineer shall establish the amount of the bond.

## Section 11.2 Bonds and Inspection Fee

### 11.2.1 Erosion and Sedimentation Control

When required, the applicant shall post an E&S bond in the form of cash or check in an amount determined by the Town Engineer based upon the approved site plan. Such bond shall be posted prior to any soil disturbance on the site and prior to the issuance of Zoning and Building Permits. The E&S bond will not be released until the entire site or entire phase is stabilized to the satisfaction of Town staff. The Town Engineer may authorize release or reduction of the E&S bond.

### 11.2.2 Performance Bonds

- A. Industrial, Business, and Multi Dwelling Development: All site improvements must be completed according to the approved plan prior to receiving a Zoning Certificate of Compliance and a Certificate of Occupancy. Site improvements, which shall be designed in accordance with established standards, rules and regulations applicable in the Town of Portland, include: street grading; roadway and parking lot paving, street planting; the installation of curbs, gutters, storm drainage facilities, landscaping, sidewalks, monuments, bridges, culverts, landscaped buffers, fencing, walls, lighting, railings, directional signage, and other improvements deemed necessary by the Commission. However, in the event that certain specific improvement items, including the final course of paving (binder course must be installed), landscaping (excluding required buffers), and turf establishment cannot be completed due to the winter months (closure of asphalt plants and non-planting season), a bond for such specific improvement items shall be posted prior to the issuance of the Zoning Certificate of Compliance and Certificate of Occupancy. The bonded improvements shall be installed prior to June 30.
  - 1. Town Center Village District Overlay Zone: All exterior improvements to buildings or structures must be completed in accordance with the approved design prior to the

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issuance of a Certificate of Zoning Compliance for issuance of a Certificate of Occupancy. In certain instances and at the discretion of the Zoning Enforcement Officer, the Town may allow a bond to be posted for specific improvements not yet installed. Any bonded improvements must be installed and completed within 30 days of the issuance of a Certificate of Occupancy.

- B. A performance bond shall be posted in one or more of the following methods and in a form that is acceptable to the Town Attorney:
  - 1. A cash bond; or
  - 2. An irrevocable letter of credit
- C. The amount of the performance bond shall be established by the Town Engineer. The bond shall cover the full cost of the improvements as if let-to-bid by the Town without advantages of on-site building materials or the sale of removed earth material. In addition, the bond shall include an amount to cover the escalation of all improvement costs over a two-year period.
- D. Upon completion of the required improvements the applicant may be required to submit to the Commission the following, as may be applicable:
  - 1. Record Drawings of the improvements (supplied by licensed engineer or land surveyor);
  - 2. Certification of accurate monument location (supplied by land surveyor);
  - 3. Easements in a form satisfactory to the Town Attorney including a written geometric description of all such easements; and
  - 4. Proof of fulfillment of any other requirements or conditions.
- E. The performance bond may be released when all required improvements have been completed to the satisfaction of the Commission, the Town Engineer, and Zoning Enforcement Officer. The Commission shall authorize bond releases or bond reductions at one of its meetings based upon the recommendation of the Town Engineer.
- F. If the improvements are not installed as required, the Commission is under no obligation to accept the work. The Commission may consider the calling of any bond for failure to complete necessary work upon the recommendation of the Town Engineer.

### 11.2.3 Completion of Work

Failure to complete work as specified on the approved site plan and application within 5 years from the date of the Commission's approval of the site plan shall result in automatic expiration of the approval, provided that the Commission shall file on the Land Records of the Town of Portland notice of such expiration.

### 11.2.4 Other Bonds

- A. Multiple-Dwelling Development: When required by the Commission to assure proper maintenance of all site improvements, a maintenance bond in an amount of ten (10) percent of the cost of these improvements shall be submitted to the Town. The maintenance bond shall remain in effect for a minimum of one (1) year from the date of completion off all proposed improvements. The bond shall be released upon certification that all required improvements have been completed to the satisfaction of the Town Engineer and other appropriate Town departments. Bond releases shall be authorized by the Commission at one of its meetings. During such period, the applicant shall, when notified by the Town, promptly at his/her own expense, repair all failures and defects of said improvements. Should the

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applicant fail to remedy any such failures or defects within a reasonable time, the Commission may consider the calling of the bond upon the recommendation of the Town Engineer.

- B. Bonds in conjunction with Earth Material Removal, Filling, and Excavation permits shall be posted as required in Section 9.5 Earth Material Removal, Filling and Excavation.
- C. Landscape Maintenance Bond: The applicant shall post a maintenance bond in the form of cash or check in the amount of 10% of the total cost of the landscape plantings prior to the issuance of the Certificate of Occupancy. If a performance bond has been posted for landscape plantings, then the applicant shall post a maintenance bond subsequent to the installation of the plantings. The bond shall be held for one year. If the applicant fails to maintain the plantings to the satisfaction of the Town Engineer during such time, the Commission may consider the calling of the bond upon the recommendation of the Town Engineer.

### 11.2.5 Inspection Fee

As per Town Ordinance, as may be amended, a sum, to be computed by the Town Engineer, equal to 3% of the estimated cost of site improvements specified in Section 11.2.2.A, shall be paid at the same time that a bond for Erosion and Sedimentation controls is submitted.”

## Section 11.3 Enforcement and Penalties

### 11.3.1 Zoning Enforcement Officer

The Planning and Zoning Commission shall appoint a Zoning Enforcement Officer and may appoint one or more Deputy Enforcement Officers. The Planning and Zoning Commission also shall have the responsibility and authority to enforce the provisions of these Regulations. Said Zoning Enforcement Officer(s) may also be appointed Special Constables pursuant to CGS Section 7-92. The First Selectman may appoint additional Special Constables at any time for terms of not more than 2 years

### 11.3.2 Enforcement and Penalties

- A. These regulations shall be enforced by the Zoning Enforcement Officer and/or designee or the Commission or Special Constables as specified in Section 11.3.1 of these Regulations, who shall be empowered to cause any building, structure, place or premises to be inspected and examined and to order, in writing, the remedying of any conditions found to exist therein or thereat in violation of any provision of these Regulations, or any permit or approval issued hereunder.
- B. Any person violating any of the provisions of these Regulations shall be subject to the fines, injunctive procedures, and any other penalties prescribed by CGS Chapter 124, as amended, including, when warranted, a separate violation for each day that a violation exists.

### 11.3.3 Appeals

- A. Powers and Duties of the Zoning Board of Appeals

The Zoning Board of Appeals shall have all of the powers and duties prescribed by these Regulations and the *Connecticut General Statutes* which includes the following:

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1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, or decision made by the Zoning Enforcement Officer;
2. To hear and decide all matters upon which it is required to pass by the Zoning Regulations;
3. To determine and vary the application of the Zoning Regulations in harmony with their general purposes and intent, and with due consideration for conserving the public health, safety, convenience, welfare, and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the zone in which it is situated, a literal enforcement of the Regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured.

### B. Use Variances

1. Use variances shall not be allowed for those uses not permitted or specifically stated in Section 4.1 Permitted Uses Residential Zones, Section 5.1 Permitted Uses Business Zones, Section 6.1 Permitted Uses Industrial Zones, Section 7.2.10 Permitted Uses Flood Plain Zone, and Section 7.5.3 Permitted Uses Town Center Zone, of these Regulations.
2. In Residential Zones, use variances shall not be granted for those uses listed specifically to only be allowed in the B-1, B-2, B-3, I, IP, and RI Zones and indicated in the permitted use tables in Section 5.1 Permitted Uses Business Zones and Section 6.1 Permitted Uses Industrial Zones of these Regulations.
3. Also, use variances for those residential uses not permitted in specific residential zones as per Section 4.1, shall not be granted.
4. In Business Zones, use variances shall not be granted for those uses listed specifically to only be allowed in the RMD, R-10, R-15, R-25, RR, I, IP and RI Zones and indicated in the permitted use tables in Section 4.1 Permitted Uses Residential Zones and Section 6.1 Permitted Uses Industrial Zones of these Regulations.
5. Also, use variances of those business uses not permitted in specific business zones as per Section 5.1 Permitted Uses Business Zones shall not be granted.
6. In Industrial Zones, use variances shall not be granted for those uses listed specifically to only be allowed in the RMD, R-10, R-15, R-25, RR, B-1, B-2 and B-3 Zones and indicated in the permitted use tables in Section 4.1 Permitted Uses Residential Zones and Section 5.1 Permitted Uses Business Zones of these Regulations.
7. Also, use variances of those industrial uses not permitted in specific industrial zones as per Section 6.1 Permitted Uses Industrial Zones shall not be granted.

### C. Other Appeals

Any person or persons, aggrieved by any action of the Planning and Zoning Commission may appeal such actions in the manner provided in the *Connecticut General Statutes*.

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## **Section 11.4 Amendments**

### **11.4.1 Validity**

If any section, paragraph, clause, or provision of this Regulation shall be adjudged invalid or unconstitutional for any reason, such adjudication shall apply only to the section, paragraph, clause, or provision upon which such adjudication is based; and the remainder of this Regulation shall continue to be valid and in full force and effect.

### **11.4.2 Amendments**

The Planning and Zoning Commission may, from time to time, amend, change, modify or repeal these Regulations, including the zoning map, which is part hereof, on its own initiative or when initiated by a written petition. Any amendment may be adopted only after due notice and a public hearing as prescribed by CGS Section 8-3, as amended. Any petition for amendment shall be submitted in writing and comply with Section 10.3.

### **11.4.3 Effective Date**

Zoning Regulations for the Town of Portland were first effective on May 24, 1948. The current Regulations became effective on November 9, 2007. Subsequent revisions are listed in Table 11.4.3 which follows.