

**Disclaimer:**

This document is a user guide only. Its purpose is to assist applicants, consultants, town staff, the Planning Board, and general public navigating the Clifton Land Use Ordinance. This document is not a legal document and is non-binding on any party. Statements made in this document may sometimes reflect the opinion of the author or may be inaccurate in describing the legal requirements or processes defined by the Clifton Land Use Ordinance. People using this document do so at their own risk with no warranty expressed or implied regarding outcomes as a result of using the document. The Town reserves the right to alter or otherwise adjust, modify or amend this document at any time.

**Introduction**

The Clifton Land Use Ordinance (CLUO), available on the Planning Board website, is a comprehensive set of submission and construction requirements, workflow and administrative procedures, and enforcement directions guiding land development in Clifton. Local preference drives some requirements while other requirements root in state and federal statutory law or agency regulations. While the ordinance is cumbersome at first, most of the user requirements are in only a few sections. Other sections are in place to provide a legal justification or framework to change the CLUO, authorize waivers, and ensure continuity over long time periods. Please note the CLUO receives periodical updates and the user should always ensure they are using the current version.

**Article Summary**

Article 1 establishes the ordinance and provides an understanding of basic concepts adopted by the town for the application of this local ordinance.

Article 2 contains the administrative guidance establishing the various positions responsible for implementing the ordinance as well as providing a high level overview of the local process.

Article 3 and Article 4 work together establishing the zoning portion of the ordinance. These Articles support the decision process rationale and ultimately guide what development type and allowed locations .

Article 5 covers the legal aspects of permit issuance, which is primarily accomplished through the code Enforcement Officer. The Planning Board is the approval authority while the Code Enforcement Officer actually issues a permit to undertake the development. The Code Enforcement Officer has the authority to allow some types of development without Planning Board review. Projects not requiring Planning Board Review must still meet ALL performance standards such as construction, landscaping, screening, erosion control, fencing, signs, site cleanup, etc.

Article 5 also provides the opportunity for the town to seek consulting services at developer expense for those types of projects and issues complex enough to exceed the immediate knowledge and skills of town staff and Boards. This Article also established operational permitting processes. Operational permitting is for a select subset of projects requiring on-going oversight by the town, usually through code enforcement procedures. The CLUO lists types of projects requiring this type of permitting in a later Article.

Article 6 is the *starting point* for most developers, homebuilders, or other types of land use impacts. Article 6 directs the applicant where to look to determine if the proposed use is an authorized use and helps determine the approval jurisdictional authority – principally the Code Enforcement Officer or the Planning Board. Article 6 lays out the process and gives the applicant guidance for the required steps and submission requirements.

Article 7 provides the General Performance Standards for major types of activities. These standards are applicable to all development in town whether overseen whether or not there is a requirement for a permit or not. This means even if the activity is allowed with no permit, the performance standard is enforceable by the Code Enforcement Officer.

Article 8 is very important as it contains the tables designating the types of residential activities allowed in each zoning district as discussed in Articles 3 and 4 along with the approval and permitting authorities. Article 6 will direct the applicant to this section as a first step for residential development and activities.

Article 9 is the shoreland management portion of the CLUO. This section almost in its entirety comes from the State Shoreland Zoning standards. The town does not add anything beyond the minimum state requirements. The Maine Department of Environmental Protection and town Code Enforcement will enforce this portion of the ordinance.

Article 10 covers Flood Hazard Area Development based on the Federal Emergency Management Agency (FEMA) maps. This portion of the ordinance contains applicable federal regulations locally enforced with regard to development within federally designated flood zones.

Article 11 contains guidance for three areas selected by the town for protection. These areas are the gravel aquifers identified on various maps in the CLUO and Comprehensive Plans; the area around the Bangor Water District lands – the reservoir for the Bangor Water District is wholly within watershed land owned by the Bangor water district – no development allowed except that required by the water district to perform its mission; and the Shipley Conservation Easement Overlay. This land is a privately owned conservation area.

Article 12 contains criteria for assessing non-residential project impact and guides the type of review process the Planning Board will undertake including number of hearings, submissions, etc.

Article 13 contains a table of allowed non-residential uses by zoning criteria and has a relationship with Articles 3,4, and is equivalent to Article 8 for residential uses.

Article 14 covers 10 types of specific activities with standards, submission requirements, and procedural guidance above and beyond “typical” projects.

Article 15 contains the generic major development standards for cluster development projects, road design, storm water, and other utilities.

Article 16 helps applicants in situations with existing structures or lot sizes created before the existence of the CLUO. This section guides the town and applicant toward compromise solutions resulting in the best possible outcome for situations outside most controls.

Article 17 establishes the Board of Appeals and processes in case either the applicant or other interested party believes the Planning Board or Code Enforcement Officer came to a bad conclusion either approving or disapproving a project.

Article 18 is a long set of definitions for words used in the ordinance. In the case of a misunderstanding, the definition of the word or word group listed in this section will guide the interpretation of the ordinance.

### **Applicant Submittals**

Applicants should start in Article 6. Paragraph 6.1.1 will guide the applicant into the appropriate Article to initiate the process. Most applicants will find themselves in Article 8 for residential activities; Article 9 for shoreland zoning issues - generally any activity within 250 feet of a lake, pond, or Resource Protection Area (see zoning map) and 75 feet from a stream; or Article 13 for non-residential activities. Later in this guide, there is greater detail about specific sections or paragraphs and development type.

Administratively, once there is a determination of the approval and permitting authority (permit not required, Code Enforcement Officer only, Planning Board review prior to permit), the applicant should work with the Code Enforcement Officer to either develop plans for direct approval or to prepare documents for the Planning Board and get onto the monthly agenda. The Planning Board process is public and transparent and this there is public notice at specified times before the meetings to allow interested people to attend the meetings and observe the process. Members of the public sometimes attend as do media representatives from time to time. The public should not expect to be heard during the discussion process with the applicant except during public hearings. Periodically, if interaction is not disruptive, the Board may, if it wishes, interact with the public during the review process to answer questions or otherwise maintain good community relations. People may photograph or otherwise record the meetings as long as it does not disrupt the proceedings.

Typically, the applicant or representative must be present in order for the application to start undergoing review. If there will be no one present, the applicant must submit a request in writing for review to commence without representation. Sometimes this happens with a Shoreland Zoning application by an out of state applicant and the Code Enforcement Officer often briefs the Board in this case.

Paragraph 6.3 contains a detailed table of submission requirements. The requirements come from a determination made after reviewing Articles 8, 12, 13, and 14. If the applicant chooses not to deliver one of the submission requirements, the applicant must provide a written waiver request discussing why the submission requirement is not in the package. It is up to the Board to determine if the waiver

request is reasonable. When requesting a waiver, pay careful attention to Paragraph 6.8.3.3 forbidding the Planning Board from waiving a performance standard.

Paragraph 6.3.7 is of particular significance for very large or complex projects. It requires submission of a Comprehensive Impact Statement apart and separate from the other submission requirements. The statement should essentially be a *stand-alone* narrative covering the project and impacts enumerated in Paragraph 6.3.7 CIS Section 2. Reference to tabs in the full application is acceptable if it supports the assertion made about the impact and mitigation in the CIS. The Planning Board may add items from a longer menu in CIS Section 3 if desired or applicable. Lastly, regarding the CIS, Section 4 provides the applicant the opportunity to summarize in tabular form the impacts and mitigation measures as well as the positive attributes the project may bring to the community.

### **Applicant Process**

Residential and basic non-residential applicants typically have no reason to request confidentiality. However, as in larger communities such as Bangor or Brewer, there may be unique situations in developing the industrial zoned parcel on the Eddington-Clifton town line where this might come up. Paragraph 6.4.1 covers this rare possibility.

More typically, most applicants will enter into the process at Paragraph 6.4.2 for a pre-application conference. People wishing to develop their residential waterfront property will typically have this discussion with the Code Enforcement Officer since it is rare for Shoreland Zoning permit requests to go beyond one meeting. Simple site plans for low traffic, low impact businesses will frequently take only one meeting if the applicant meets all the submission requirements with few or no waiver requests. A pre-application conference with the Code Enforcement Officer will greatly improve the chances for a one meeting approval for small projects. This said, the Planning Board recommends a pre-application meeting (see Paragraph 6.4.2 for details) the month prior to major submissions for non-residential site plans.

Applicants with small subdivisions should expect two to three meetings and larger ones could take several months. Large scale site plans for complex projects will likely result in several months of effort and if there are external state or federal agency reviews, the process could well take a year or more before a final decision by the Planning Board. Pre-application meetings are absolutely essential for these types of projects.

Along with pre-application comes the very important aspect of vesting your project. Paragraph 6.4.3: Vesting with the town means the applicant will undergo project review, zoning, rules, permits issued or applied for, and adjoining property state/status based on the ordinance in place on the date of vesting. Specifically, this limits the impact of Board or public sentiment change after the developer submits the project. There is the potential by not following the process and properly vesting a project, the Board or public could file a moratorium changing the ordinance creating

unpredictable challenges for the developer. Alternately, the Board needs to carefully consider the submission documents before qualifying the developer as being vested because once vested, it will be challenging to repair damage done.

Vesting by the municipality may or may not affect rules or regulations implemented by the state or federal governments during the review period. Vesting a project provides a greater degree of certainty (though not one hundred percent) of regulatory predictability in the review process. The traditional and preferred way from the town perspective to vest a project is to come to a meeting with a complete submittal acceptable to the Planning Board. This will result in statutory vesting under Maine law (1 MRSA §302).

The second method for vesting is one developed locally and is a more likely method for complicated projects and in particular those very specific projects listed in Article 14. Paragraph 6.4.3.1.2 provides a detailed review of the vesting request letter and the benefits of making the request. While 120 days may not be enough to collect the data for some projects, it is adequate for most. Additionally, the applicant may wish to request an alternative number of days to produce the required initial plan in order to vest the project. Regardless, this is the only method available to the developer to enter into the process with some degree of certainty. Specifically, without this vesting, it is conceivable a moratorium or complete revision of the CLUO could occur making a project no longer viable.

Maine subdivision law dictates vesting more clearly and the subdivisions must adhere to more specific requirements listed in the CLUO to vest under the substantially reviewed criteria.

The next step in the process will be to schedule a site visit. Clearly there are access and seasonal weather and ground condition issues to consider when scheduling site visits. The applicant should also ensure the site is safe to visit and provide an on-site safety brief before the Board commences the walk about. Mark with paint or flagging building locations, lot lines, major proposed construction activities and other landscaping, drainage, and utility proposals on the ground. The public may attend as long as they do not disrupt or create a safety hazard. Board members should not discuss the project particulars among themselves during the site walk other than to request information from the developer or representative.

Either during the meeting or soon after the site visit, the applicant and board will decide to hold one continuous process or to hold two processes resulting in a decision. The reason for this is some projects will require additional external review. Some external review processes will result in almost no substantive changes to the project while others may cause significant changes. For example, typically a subdivision or a gravel pit will not have changes of any real substance after going for state review (if required). Alternately, a wind turbine project may change the location of a turbine or other feature and the town will likely want to have some input to the developer before approval and construction permit issuance.

### **Comment and Input Beyond the Planning Board**

Applicants for smaller projects rarely have issues with people with an interest; this said, sometimes abutting property owners have some concerns about people doing waterfront modifications to their property. Larger projects usually drive significant interest and there are abutter notification requirements. Paragraph 6.4.6.3 provides detail about this and the applicant and their legal team should make appropriate preparations to respond and react. The Planning Board has the discretion to hold one or more public hearings about the project and some of these hearings may be long and at a site other than the Clifton Town Hall if there is substantial public interest. Applicants should also know the process will likely have real time or later broadcast over the internet.

There will come a point in the process when the Planning Board will close all testimony and submittals. At this juncture, the Board will deliberate in public about the project. If the Board opens the floor for applicant input, they will likely also open the floor for possible rebuttal and vice versa. In other words, if the Board seeks clarification about a public comment, they may also ask if the applicant has a response.

### **Decision**

The Planning Board will render a decision, and assuming the decision favors the project, there are a couple possibilities. First, the project may be simple and the applicant will soon receive a permit from Code Enforcement. The applicant may require external agency review as described above; the Board will make provisions for whether this means Code Enforcement will issue a permit upon completion of the agency review or come before the Board again. Lastly, it's possible a third party will file a complaint driving the project to the Board of Appeals or possibly directly to Maine Superior Court.

The applicant should review carefully the project review criteria towards the back of Article 6 because failure to follow these criteria or make the necessary submittals will delay a decision or possibly result in Planning Board denial. Of note are the review criteria for subdivisions as it is statutory under state law and not within the control of the Town to waive in several cases.

### **Zoning Implications**

As noted above, there are three major areas where most projects fit: Article 8 (Residential); Article 9 (Shoreland); Article 13 (Non-Residential). Shoreland projects are a bit self-explanatory at this point so the balance of this explanation will focus upon working through Articles 8 and 13.

Article 3, Establishment of Growth Management Areas, provides the rationale for six unique zoning classifications. The Town designated these areas as Growth Management Areas (GMA) 1, 2, and 3; Shoreland Management Area; Flood Hazard Management Area; and Special Protection Management Areas. It also provides overlays for the portions of the areas allowing targeted growth that citizens in Clifton approved by popular vote at the time of ordinance development. Article 4, Growth Management

Strategy, provides the detail guiding the rules and allowed uses in Articles 8, 9, and 13. If you want to understand the logic, refer to those Articles and the 2005 version of the Clifton Comprehensive Plan.

If the type of development proposed is residential in nature (including residential subdivisions), refer to Article 8. GMA 1 is the portion of town targeted for the most growth. GMA 2 covers portions of the town where there is some growth, and more growth is possibly desirable, however, there is less public infrastructure and easy accessibility. GMA 3 covers those outback areas where forest cover is the dominant feature on the terrain. Residential growth and commercial or retail business is not something the town hopes to have in this zone. Reviewing Table 8A, mobile home parks are not an allowed use in GMA 2 or GMA 3 as an example. There are some types of home business opportunities allowed throughout the entire community regulated in part with criteria in Article 8. There are seasonal conversion requirements in Paragraph 8.6 as well as Article 9.

Keeping in mind there is no public sewer in Clifton, domestic and commercial (e.g. restaurants, bars, motels, etc.) waste disposal falls within the purview of the Maine Department of Human Services, Health Engineering Subsurface Wastewater Disposal Rules. The Code Enforcement Officer provides oversight to state licensed Site Evaluators to examine sites and development septic systems under 2000 gallons per day. Most houses use between 180 and 450 gallons per day for design purposes. Rarely, septic system waivers, when needed, must go all the way to the state for approval.

Non-residential development is more complex; refer to Article 13 for the next portion of the discussion. The topology for non-residential development is admittedly complicated; this complexity, when applied, enables quite a bit of flexibility benefitting landowners and the Planning Board considering the lack of staff for implementing this ordinance. The breakout is as follows: commercial (7 categories); general institutional; general industrial; transportation and utility; resource based activities (4 groups divided into commercial and non-commercial uses).

### **Non-Residential Development Review and Submission Process Discussion**

Each of the tables contains fairly detailed explanations regarding the types of development allowed in each area. The type of development and scale of development will in turn help classify the project complexity using tiers to further guide the Planning Board workflow and decision process (identified in Article 12). Major points to understand in this section are the nuanced differences between businesses with agriculture and forestry as core operations versus commercial retail businesses. The key difference being some activities with a seasonal agricultural purpose may only require Code Enforcement Officer review and permitting as opposed to commercial retail requiring full Planning Board review prior to permit issuance. This is why it's very important to understand the CLUO basic construction requirements apply to ALL types of development and not just the development requiring Planning Board review.

When determining the allowed use for the parcel planned for development, look on the map to determine the Growth Management Area. See if the use is allowed at all. Then refer to Article 12 to determine the Tier (1 thru 3). Refer back to Article 13 and determine if the use remains an allowed use at the desired Tier. If not, can the activity occur at the desired location with less complexity (lowering the Tier)? Lastly, determine whether or not the desired use and other project elements meet the dimensional requirements in Tables 12 C and 12 D. The Board and Code Enforcement Officer need to co-develop a checklist for this process.

### **Working with the Specific Project Standards of Article 14**

There are ten types of development considered unique by the town with requirements above and beyond the standard requirements for all projects. Most of these projects also require some type of Operational Permitting. The final portion of this consultative guide will discuss these projects.

#### **Adult Businesses**

These types of businesses may only exist in GMA-1B otherwise known as the industrial area. There are various requirements for setbacks away from certain other types of activities including schools and churches. The Planning Board needs to keep this in mind as they approve projects in the future. There are unique signage requirements based on judicial outcomes to be attentive about. Alcohol is also not allowed in these types of establishments and the activity requires an annual operational permit.

#### **Campgrounds and Travel Trailer Parks**

This type of activity is something Clifton people traditionally embraced, as Clifton is the well-known host community for a major campground on its namesake Parks Pond. A highlight of this paragraph is the lot size for new campgrounds versus older “grandfathered” sites on existing campgrounds – 5,000 square feet. There is no operational permitting requirement for campgrounds.

#### **Extractive Industries**

Clifton is home to many gravel pits – some active and some not. A key feature to this paragraph is its adoption of the Maine statutes regulating these types of industries and its authorization of the Code Enforcement Officer to use the state code to enforce compliance. This paragraph delineates the types of activities requiring an operational permit and others as not requiring a permit based on scope of activity.

#### **Junkyards, Automobile Graveyards And Automobile Recycling Businesses**

This paragraph also mostly adopts the state statutes regarding this activity with some minor additions. Note here the discussions of waste management on the site such as oils and fuels. The town formerly had a separate ordinance for this activity and this consolidates and coordinates the development activity with other town operations. This activity requires an annual operation permit review.



**Mobile Home Parks**

This Paragraph replaces the former mobile home park criteria in a separate ordinance consolidating and coordinating this activity within the town. Parks require operational permits. Existing parks only need to come under this ordinance if they expand.

**Telecommunications Towers**

This paragraph is straightforward in its application; this activity requires operational permitting.

**Small Wind Energy Systems (Under 100 KW)**

This paragraph covers use of small wind energy systems such as may be found in use by a homeowner or small business. Notable is very small systems (under 10 KW) need only obtain approval and permit from the Code Enforcement Officer. There are sound standards for these systems however, there is no requirement for a pre-construction study as part of the permitting process. Operational permits are a requirement for systems over 10 KW and permits for Meteorological Towers are in this paragraph.

**Large Wind Energy Facilities**

This section is extensive and applies to any site designed to supply over 100 KW of electrical power generation. Operational permitting is a major requirement for this type of development after completion of a rigorous application process, construction, and proof the facility is in place and capable of operating as represented during the regulatory review process.

The first major feature in this process is recognizing the Planning Board does not have the in-house expertise to adequately review the proposal on behalf of the town. The Board will hire consultants and in particular sound engineering support, to review the required sound survey before and after construction. Another feature of this section is a required decommissioning plan. Due to the life expectancy of this development and the potential to litter the mountains with metal hulks, the town developed a contingency plan to ensure funding availability at the end of project life.

There are mitigation waiver requirements for parcels participating or directly impacted by various aspects of the development. These waivers are part of the disclosure and ultimately must be recorded instruments at the Penobscot County Registry. Safety certification from one of several possible recognized sources must also be part of the submission package.

The preliminary sound survey tends to be the most tenuous and potentially controversial submission element. Appendix A of the section provides extensive detail regarding conduct of the survey.

The town repealed and replaced some of the ordinance at Paragraph 14.8.6. The next time the town updates the CLUO, eliminating this reference text would bring clarity

to the section; the initial reason for the text was to ensure everyone knew specifically what was going away. This is no longer necessary and the town does have a record of the changes via retention of the earlier documents in the town archives. A detailed set of standards commences at Paragraph 18.8.6.1. These are the standards a town consultant will verify from the submission by the developer's consultant. In an effort to help the Planning Board and the public in general, Figure 14-2 lists a variety of activities and sound output to help relate discussion of sound generated by the proposed project.

The next block of detailed standards discusses setbacks, wildlife impact, and various mechanical design and construction criteria. The CLUO recognizes there is potential on complex projects such as this for change at the time of construction. There are criteria in Paragraph 14.8.12 to address these changes.

A major key to this type of development is the requirement for the Maine DEP to review most wind energy projects. The criteria triggering Maine Department of Environmental Protection (MDEP) review is ever changing; this acknowledged, the town will only issue a provisional approval to the applicant to take to the MDEP. Once the MDEP conducts their review, the town will conduct a final review before making a decision. This type of project will likely require more than one public hearing and it may be at an off-site venue (a local school) if there is substantial public interest.

### **Medical Marijuana Registered Dispensaries And Medical Marijuana Cultivation Facilities**

These types of facilities require heavy state regulation. The main criteria or concern for the Planning Board and town are siting and operational permits. There may be a future need to develop a section to address recreational marijuana retail and cultivation facilities.

### **Drug Treatment Centers**

Unfortunately, drug abuse is part of American society and there is a need for these types of facilities. These facilities undergo heavy state regulation and typically are much closer to more comprehensive higher echelon medical facilities. The purpose for including this type of development in the ordinance is to clarify siting issues and to implement an operational permitting protocol.