

This first documentation is from the 04/18/23 Select Board Meeting. Updated documentation (pg. 13 +) from after the meeting follows.



Town of Waterboro

Code Enforcement Office

24 Townhouse Road

East Waterboro, Maine 04030

(207) 247-6166 x120

ceo@waterboro-me.gov

Shoreland Ordinance Change Checklist

- ☒ Town Planner Edit & Endorsement
- ☒ Legal Endorsement & Verbage Approval
- ☒ Planning Board Workshop & Endorsement 4/15/2023
- ☐ Presentation to Select Board & Schedule Hearing
- ☐ Post Proposed Change / Copy Available to Public
- ☐ Hold Public Hearing
- ☐ Select Board Approval
- ☐ DEP Approval



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April 13, 2023

To: Board of Selectmen, Town of Waterboro

From: Michael Gilpatrick, Code Enforcement Officer

Re: Shoreland Zoning Ordinance Changes

I am requesting an amendment to our Shoreland Zoning Ordinance which will make our Shoreland Zoning part of our original zoning map. By making the 250' from a protected resource its own zone our zoning map will now be consistent with our ordinance. The shoreland zone will stand alone doing away with the dual zone in many cases AR/Shoreland.

In doing so I believe it would be prudent to reduce the road setback simply because a huge percentage of the shoreland zone has already been developed and the average lot size is typically less than 20,000 sq. ft. and what I consider legally non-conforming as these lots precede zoning.

In the intent to bring existing development closer to compliance and protect the resource, reducing the road setback is the best option. This will also improve the situation for residents providing they can meet all other requirements in the shoreland zone. With this change residents may now be able to develop some manner of an accessory structure. The comment I hear most often is I need a garage or a shed to store all my things. Hopefully this will improve their situation. DEP has been consulted and has stated their primary concern is setback from the resource.

The second change was advised by the Town Attorney, Natalie Burns, proven recently by case law stating that all action taken by the authority having jurisdiction is appealable, thus the reasoning for notifying direct abutters of all development. This allows us to start the time table for the Appeals Board.

Sincerely,

Michael Gilpatrick
Code Enforcement Office

**AMENDMENTS TO TOWN OF WATERBORO SHORELAND ZONING ORDINANCE
SECTIONS 15(B)(1) AND 16(H)
RE: SETBACKS AND APPEAL AUTHORITY OF THE BOARD OF APPEALS**

15. Land Use Standards. All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

B. Principal and Accessory Structures

- (1) Required setback from waterbody or wetland. All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great pond classified GPA and rivers that flow to great ponds classified GPA, and seventy five (75) feet, horizontal distance, from the normal high water of other water bodies, tributary streams, or the upland edge of a wetland, except that in General Development 1 District the setback from the normal high water line shall be at least twenty five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, road, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specific above shall apply.

In addition:

- (a) The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water- dependent uses.
- (b) All principal structures along Significant River Segments as listed in 38 M.R.S.A. section 437 (see Appendix A), shall be set back a minimum of one hundred and twenty- five (125) feet, horizontal distance, from the normal high-water line and shall be screened from the river by existing vegetation. This provision does not apply to structures related to hydropower facilities.
- (c) The total area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed 20 percent of the lot, including land area previously developed or built upon.
- (d) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a

permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

- (e) Other required setbacks. All new principal and accessory structures within any shoreland zone the AR Zoning District shall be set back at least twenty (20) feet from the side property lines, and twenty-five (25) feet from the front property line as measured along the road frontage of the lot. In the event that a lot does not have shore frontage, any principal or accessory structure shall be set back at least twenty (20) feet from the rear property line, in addition to the setbacks required in Section 15(B)(1). seventy-five (75) feet from the front property line, as measured along the road frontage of the lot; thirty-five (35) feet from the side property lines and thirty-five (35) feet from the rear property line if the lot does not have frontage on a waterbody or wetland. The VR Zoning District establishes a 40' setback from the front property line, as measured along the road frontage of the lot, and 20' from side property lines and 20' from the rear property line if the lot does not have frontage on a waterbody or wetland

(f) If a proposed new dwelling on an undeveloped, residential lot of record, cannot meet either or both the required front and side setbacks established in Subsection 1-A the side property setback shall be a minimum of ten (10) feet and shall be increased one (1) additional foot for every five (5) feet of road frontage over fifty (50) feet. No dwelling or structure shall be constructed so that it is within fifteen (15) feet of a dwelling or structure on an abutting lot. If the required front setback cannot be met, it may be reduced to no less than twenty-five (25) percent of the average depth of the lot

If a new proposed addition to a dwelling that existed on January 1, 1989, cannot meet side or front setbacks established in Subsection 1-A, the side property setback shall be a minimum of ten (10) feet and shall be increased one (1) additional foot for every five (5) feet of road frontage over fifty (50) feet. No addition shall be constructed so that it is within fifteen (15) feet of a dwelling on an abutting lot. If the required front setback cannot be met, it may be reduced to no less than twenty-five (25) percent of the average depth of the lot.

16. Administration

H. Appeals

- (1) Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers:

- (a) **Administrative Appeals:** To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order,

requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. ~~Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.~~

Mike Gilpatrick

From: Kalinich, Jeffrey C <Jeffrey.C.Kalinich@maine.gov>
Sent: Friday, March 31, 2023 9:17 AM
To: Mike Gilpatrick
Subject: RE: Shoreland Zoning change

Mike,

As I mentioned during our phone conversation the Mandatory Shoreland Zoning Act and Chapter 1000 do not establish minimums for side or road setbacks in the shoreland zone and the draft is not inconsistent with the Act. However I want to make sure it is accomplishing your goal. Waterboro has more than just a 100 foot setback requirement shoreland zoned lots and not all shoreland zoned lots have shore frontage. So if your goal is to apply these side and road setbacks on just those lots then the amendment would cover everything. What I'm not sure of, and want to point out just in case, is if how this is worded only applies to a subset of what is currently in the VR and AR overlap areas.

Give me a call if you would like to discuss.

Jeff

Jeffrey C. Kalinich
Assistant Shoreland Zoning Coordinator
Maine Department of Environmental Protection
312 Canco Road
Portland, Maine 04103
Ph. (207) 615-7044
Fax. (207) 822-6303
www.Maine.gov/dep

From: Mike Gilpatrick <mgilpatrick@waterboro-me.gov>
Sent: Thursday, March 30, 2023 4:31 PM
To: Kalinich, Jeffrey C <Jeffrey.C.Kalinich@maine.gov>
Subject: Shoreland Zoning change

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This is the change we would like to make to the Shoreland Zoning attached, This would eliminate what we currently consider an overlapping zone this is an attempt to bring many of our currently non -conforming structures into compliance. I have tried to obtain an average lot size Lake Sherburne, Lake Arrowhead and Little Ossipee Lake a rough average would be around 20,000 sq. ft. in the Shoreland Zone. I felt it would be prudent with planning the boards blessing to enact the rear and side Set-backs of a District of a similar lot size. Please see attached proposed amendment that we discussed.

Could you please weigh in for the department on this matter

Mike Gilpatrick, CEO, BI, LPI
ceo@waterboro-me.gov
Waterboro Code Enforcement Officer
24 Townhouse Road
East Waterboro, ME 04030

OFC: 207-247-6166 x120
FAX: 207-247-3443

Mike Gilpatrick

From: Natalie L. Burns <nburns@jensenbaird.com>
Sent: Thursday, April 13, 2023 10:26 AM
To: Mike Gilpatrick
Subject: RE: Waterboro Shoreland Ordinance
Attachments: SZO Amendments (revd 4-13-23).docx

Here you go. There's no problem with reducing the front setback.

Thanks,

Natalie

Natalie L. Burns, Esq.
Attorney



10 Free Street	T: (207) 775-7271
P.O. Box 4510	F: (207) 775-7935
Portland, ME 04112	Email: nburns@jensenbaird.com
www.JensenBaird.com	Bio: Natalie L. Burns Jensen Baird

From: Mike Gilpatrick <mgilpatrick@waterboro-me.gov>
Sent: Thursday, April 13, 2023 9:50 AM
To: Natalie L. Burns <nburns@jensenbaird.com>
Subject: RE: Waterboro Shoreland Ordinance

Good morning,

I would actually like to change the road setback to 25 ft instead of forty unless you feel that it would be problematic, This is consistent with village district as many of our existing Shoreland lots are comparable in size, this will give many of these lots the ability for accessory buildings for storage as long as they can meet all of the other standards that come into play in the shoreland.

My intent is also to do away with the overlapping zone AR/Shoreland zoning . I have asked many long term residents as to why this is zoned this way and no-one seems to have a reason. So from my perspective this can eliminate some confusion with overlapping regulation. In most cases the Shoreland is the most restrictive so It makes sense to me, for everything within 250 and all resource protected area to become strictly The Shoreland zone. Any thoughts or comments regarding this change would be helpful in my presentation to the board.

Thank you,

Mike Gilpatrick, CEO, BI, LPI
ceo@waterboro-me.gov
Waterboro Code Enforcement Officer
24 Townhouse Road
East Waterboro, ME 04030
OFC: 207-247-6166 x120

FAX: 207-247-3443

From: Natalie L. Burns [<mailto:nburns@jensenbaird.com>]
Sent: Friday, April 7, 2023 3:01 PM
To: Mike Gilpatrick
Subject: RE: Waterboro Shoreland Ordinance

Mike,

Attached are the proposed revisions to the SZO for the setback revisions that you requested and the appeals provision to make it consistent with the Zoning Ordinance.

You wanted to add the 100 foot shore setback to Section 15(B)(1)(e), but I didn't do that because it would create a conflict with 15(B)(1), which creates lesser shore setbacks in different areas, including 25 feet in the GD 1 District (if you even have any of those). I did states in subsection (e) that these were in addition to the shore setbacks, which is also implied in the current caption for that subsection "Other required setbacks." If you want everything to be 100 feet, that change would need to be made to Sec. 15(B)(1).

Thanks,

Natalie

Natalie L. Burns, Esq.
Attorney



10 Free Street	T: (207) 775-7271
P.O. Box 4510	F: (207) 775-7935
Portland, ME 04112	Email: nburns@jensenbaird.com
www.JensenBaird.com	Bio: Natalie L. Burns Jensen Baird

From: Mike Gilpatrick <mgilpatrick@waterboro-me.gov>
Sent: Wednesday, April 5, 2023 10:06 AM
To: Natalie L. Burns <nburns@jensenbaird.com>
Subject: RE: Waterboro Shoreland Ordinance

Yes please, could you also take a look at my proposed change, I would like to make sure the intent and language is clear
Thank you

From: Natalie L. Burns [<mailto:nburns@jensenbaird.com>]
Sent: Tuesday, April 4, 2023 4:27 PM
To: Mike Gilpatrick
Subject: RE: Waterboro Shoreland Ordinance

According to the Law Court, that is what you have to do when your enforcement decisions are not appealable to the ZBA and reviewed by the Board on a de novo basis.

Do you want me to make that change so that you don't have to continue to do that after the amendment is adopted by the Select Board?

Thanks,

Natalie

Natalie L. Burns, Esq.
Attorney



10 Free Street	T: (207) 775-7271
P.O. Box 4510	F: (207) 775-7935
Portland, ME 04112	Email: nburns@jensenbaird.com
www.JensenBaird.com	Bio: Natalie L. Burns Jensen Baird

From: Mike Gilpatrick <mgilpatrick@waterboro-me.gov>
Sent: Tuesday, April 4, 2023 3:48 PM
To: Natalie L. Burns <nburns@jensenbaird.com>
Subject: RE: Waterboro Shoreland Ordinance

Ok It is much more clear now. I need to do detailed findings of facts for every enforcement case in the SZ . It seems as though this would be a good practice anyway. Please clarify if I have interpreted this incorrectly.
Thank you

Mike Gilpatrick, CEO, BI, LPI
ceo@waterboro-me.gov
Waterboro Code Enforcement Officer
24 Townhouse Road
East Waterboro, ME 04030
OFC: 207-247-6166 x120
FAX: 207-247-3443

From: Natalie L. Burns [<mailto:nburns@jensenbaird.com>]
Sent: Monday, April 3, 2023 4:41 PM
To: Mike Gilpatrick; 'Angela Chute'
Subject: RE: Waterboro Shoreland Ordinance

Mike,

Under the Zoning Ordinance, the Board hears appeals from your enforcement decisions. Since it does so on a de novo basis, you don't have to develop detailed findings and conclusions because the Board's decision is the one that will be reviewed in any court appeal. Under the SZO, the Board does not have the authority to hear any of your enforcement decisions, whether you decide to enforce or not to enforce. Since the Law Court has determined over the past few years that all types of enforcement decisions can be appealed to court, that means you would have to do decisions on every SZO decision that include detailed findings of fact and conclusions under the applicable provisions of the SZO. This would include any complaint by a neighbor that there had been a violation of the SZO.

It may take me a few days to get this back to you.

Thanks,

Natalie

Natalie L. Burns, Esq.

Attorney



10 Free Street

P.O. Box 4510

Portland, ME 04112

www.JensenBaird.com

T: [\(207\) 775-7271](tel:(207)775-7271)

F: [\(207\) 775-7935](tel:(207)775-7935)

Email: nburns@jensenbaird.com

Bio: [Natalie L. Burns](#) | [Jensen Baird](#)

From: Mike Gilpatrick <mgilpatrick@waterboro-me.gov>

Sent: Monday, April 3, 2023 2:26 PM

To: 'Angela Chute' <achute@waterboro-me.gov>; Natalie L. Burns <nburns@jensenbaird.com>

Subject: RE: Waterboro Shoreland Ordinance

Natalie,

I will be happy to include the changes necessary to the appeals section at the same time in front of the board, although I 'm not entirely sure I understand the change. Was this also in the Boardmanship training that it appears I should have attended ? When eliminating the overlapping zone in the Shoreland zone. Jeff Kalinich had mentioned that the proposed amendment should not be a reference any other zone., he feels it could lead to some confusion. I think a bit of work on the last sentence could help clarify . Sorry for the delay Angela was out Friday and our draft was saved on her PC.

Thank you

From: Angela Chute [<mailto:achute@waterboro-me.gov>]

Sent: Monday, April 3, 2023 1:58 PM

To: nburns@jensenbaird.com

Cc: mgilpatrick@waterboro-me.gov

Subject: Waterboro Shoreland Ordinance

Good afternoon,

Per your email with Mike please find attached Waterboro Shoreland Zoning Ordinance.

Thank you

Angela Chute

Administrative Assistant to Code Enforcement, Planning, Planning Board & ZBA

24 Townhouse Road

East Waterboro, ME 04030

Office: 207-247-6166 x121

Fax: 207-247-3443

Email: achute@waterboro-me.gov

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AMENDMENTS TO TOWN OF WATERBORO SHORELAND ZONING ORDINANCE
SECTIONS 15(B)(1) AND 16(H)
RE: SETBACKS AND APPEAL AUTHORITY OF THE BOARD OF APPEALS

15. Land Use Standards. All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

B. Principal and Accessory Structures

- (1) Required setback from waterbody or wetland. All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great pond classified GPA and rivers that flow to great ponds classified GPA, and seventy five (75) feet, horizontal distance, from the normal high water of other water bodies, tributary streams, or the upland edge of a wetland, except that in General Development 1 District the setback from the normal high water line shall be at least twenty five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, road, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specific above shall apply.

In addition:

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permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

- (e) Other required setbacks. All new principal and accessory structures within ~~any shoreland zone the AR Zoning District~~ shall be set back at least ~~twenty (20) feet from the side property lines, and twenty-five (25) feet from the front property line as measured along the road frontage of the lot. In the event that a lot does not have shore frontage, any principal or accessory structure shall be set back at least twenty (20) feet from the rear property line, in addition to the setbacks required in Section 15(B)(1).~~ All direct abutters will be notified by mail, seventy-five (75) feet from the front property line, as measured along the road frontage of the lot; thirty-five (35) feet from the side property lines and thirty-five (35) feet from the rear property line if the lot does not have frontage on a waterbody or wetland. The VR Zoning District establishes a 40' setback from the front property line, as measured along the road frontage of the lot, and 20' from side property lines and 20' from the rear property line if the lot does not have frontage on a waterbody or wetland

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- (f) If a proposed new dwelling on an undeveloped, residential lot of record, cannot meet either or both the required front and side setbacks established in Subsection 1-A the side property setback shall be a minimum of ten (10) feet and shall be increased one (1) additional foot for every five (5) feet of road frontage over fifty (50) feet. No dwelling or structure shall be constructed so that it is within fifteen (15) feet of a dwelling or structure on an abutting lot. If the required front setback cannot be met, it may be reduced to no less than twenty-five (25) percent of the average depth of the lot

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