

# 1. Shoreland Zoning Provisions (Text amendments and Clarification)

## A. Section 16 (Administration)

### a. Appeals for Variance

Changes are shown via strikeout and colored text additions

**ARTICLE #:** Shall Article 16 (Administration) of the Raymond Shoreland Zoning Provisions, Section G, (Appeals), 2. Variance Appeals, as adopted May 21, 1994, and amended through June 4, 2019, be further amended by the adding the underscored language and removing the language in strikeout text as shown below?

**DESCRIPTION:**

*One Changes:*

- Add to item 2: Variance Appeals: f. 2 the words "an existing" for clarification to which type of residential dwelling as principal structure.

*[Note: The use of the word "Article" within the ordinance does not indicate a separate warrant article.]*

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**SECTION 16. ADMINISTRATION**

**A. Administering Bodies and Agents**

1. Code Enforcement Officer - The Code Enforcement Officer shall be appointed or re-appointed annually by July 1st.
2. Board of Appeals - The Board of Appeals shall be maintained in accordance with the provisions of 30-A M.R.S.A. § 2691.
3. Planning Board - The Planning Board shall be maintained in accordance with the provisions of State law.

**B. Permits Required**

After the effective date of these ordinance provisions no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming use. A person who is issued a permit pursuant to these ordinance provisions shall have a copy of the permit on site while the work authorized by the permit is performed.

1. A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
2. Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

**C. Permit Application**

1. Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14.
2. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
3. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.

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4. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure would require the installation of a subsurface sewage disposal system.
5. When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and municipal, state and federal employees engaged in projects associated with that employment.

**D. Procedure for Administering Permits**

Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of these ordinance provisions.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of these ordinance provisions.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions.
2. Will not result in water pollution, erosion, or sedimentation to surface waters.

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3. Will adequately provide for the disposal of all wastewater.
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.
5. Will conserve shore cover and visual, as well as actual, points of access to inland waters.
6. Will protect archaeological and historic resources as designated in the comprehensive plan.
7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district.
8. Will avoid problems associated with flood plain development and use.
9. Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or statute administered by the municipality.

**E. Expiration of Permit**

Permits shall expire one year from the date of issuance, if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

**F. Installation of Public Utility Service**

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate Town officials. Following installation of service, the company or district shall forward the written authorization to the appropriate Town officials, indicating that installation has been completed.

**G. Appeals**

Appeals from decisions under the Shoreland Zoning provisions and variances from the Shoreland Zoning provisions are governed by the appeals and variance procedures

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contained in the Shoreland Zoning provisions and are not governed by Article 6 of the Land Use Ordinance.

**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 appeals, on a de novo basis, where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of these ordinance provisions.
- b. **Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in these ordinance provisions.
- c. The Board of Appeals shall not have the authority to review decisions of the Planning Board. Decisions by the Planning Board shall be appealed directly to Superior Court.

**2. Variance Appeals** - Variances may be granted only under the following conditions:

- a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- b. Variances shall not be granted for establishment of any uses otherwise prohibited by these ordinance provisions.
- c. The Board shall not grant a variance unless it finds that:
  - 1) The proposed structure or use would meet the provisions of Section 15 after for the specific provision which has created the non-conformity and from which relief is sought; and
  - 2) The strict application of the terms of these ordinance provisions would result in undue hardship. The term "undue hardship" shall mean:
    - i. that the land in question cannot yield a reasonable return unless a variance is granted;
    - ii. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
    - iii. that the granting of a variance will not alter the essential character of the locality; and

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- iv. that the hardship is not the result of action taken by the applicant or a prior owner.
- d. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of these ordinance provisions to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- e. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.
- f. The Board of Appeals may grant reductions from the minimum setback requirements set forth in Section 15 (A) of these provisions according to all of the following criteria:
  - 1) Setback reduction appeals are only available to reduce the minimum requirements for setbacks of structures from lot boundary lines. Setback reduction appeals shall not be used, and are not available from bodies of water as provided in these provisions.
  - 2) Setback reduction appeals may only be granted and are only available for lots with an existing-residential dwelling as the principal structure.
  - 3) The Board of Appeals may grant a setback reduction appeal if the Board finds that granting the setback reduction will not result in unreasonable interference with the privacy interests of the abutting landowners.
  - 4) In granting a setback reduction the Board of Appeals may attach reasonable conditions, which it may deem necessary to serve the purposes of these provisions.
  - 5) A setback reduction appeal shall not be granted to enable construction or renovation that will create additional dwelling units.
  - 6) A setback reduction appeal shall not be granted to enable construction or renovation that will result in more than one garage on the lot that is the subject of the appeal.
  - 7) No setback reduction appeal may be granted that will result in impervious surface lot coverage of greater than 15%.

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- 8) Setback reduction appeals may only be granted the minimum extent necessary to accomplish the purpose of the appeal. Setbacks may not be reduced by setback reduction appeal to less than the following absolute minimum setbacks:

Front Yard	15 feet
Side Yard	10 feet
Rear Yard	15 feet

- g. The Code Enforcement Officer may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The CEO shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The CEO may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to Sections 16(G)(2)(e) and 16(G)(3)(b)(6).

**3. Appeal Procedure**

a. Making an Appeal

- 1) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty- (30) day requirement.
- 2) Such appeal shall be made by filing with the Board of Appeals a written notice of appeal, which includes:
  - i. A concise written statement indicating what relief is requested and why it should be granted.
  - ii. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- 3) Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

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- 4) The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

b. Decision by Board of Appeals

- 1) A majority of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
  - 2) When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At that time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.
  - 3) The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide under these ordinance provisions, or to affect any variation in the application of these ordinance provisions from its stated terms.
  - 4) The person filing the appeal shall have the burden of proof.
  - 5) The Board shall decide all appeals within thirty-five (35) days after the close of the hearing and shall issue a written decision on all appeals.
  - 6) All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, and the appropriate order, relief or denial thereof. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision.
- 4. Appeal to Superior Court** - Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of the vote on the original decision.
- 5. Reconsideration** - The Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to



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reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony.

**H. Enforcement**

**1. Nuisances** - Any violation of these ordinance provisions shall be deemed to be a nuisance.

**2. Code Enforcement Officer**

a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of these ordinance provisions. If the Code Enforcement Officer shall find that any provision of these ordinance provisions is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

b. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of these ordinance provisions.

c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis beginning in 1992, a summary of this record shall be submitted by March 1 to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

**3. Legal Actions** - When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of these ordinance provisions in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of these ordinance provisions and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by

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an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

4. **Fines** - Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A., § 4452.