

# Order

## Of the Bar Harbor Town Council

### For the June 12, 2018 Town Meeting

It is hereby ordered that the following article be placed on the annual town meeting warrant with voting thereon to be held by Australian ballot.

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### Warrant Article

**Article \_ LAND USE ORDINANCE AMENDMENT – Shoreland Zoning Corrections Required by DEP –** Shall an Ordinance dated November 1, 2017 and entitled “An amendment to meet conditions imposed by the Department of Environmental Protection to various Articles of the Land Use Ordinance” be enacted?

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### Shoreland Zoning Corrections Required by DEP

**An amendment to meet conditions imposed by the Department of Environmental Protection to various Articles of the Land Use Ordinance.**

*The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:*

[Please Note: Old language is ~~stricken~~. New language is underlined.]

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## Chapter 125 , LAND USE ORDINANCE

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### ARTICLE III Land Use Activities and Standards

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**§ 125-51. Marine Research.**

**A. Purpose.**

**B. Dimensional standards.**

- (1) ~~A~~. Minimum lot size: 20,000 square feet with sewers; 40,000 square feet without sewers.
- (2) ~~B~~. Minimum road frontage and lot width: 100 [feet] with sewers; 200 [feet] without sewers.
- (3) ~~C~~. Minimum shore frontage: 150 feet per dwelling unit adjacent to tidal areas; 200 feet for all other uses and structures, excluding functionally water-dependent structures.
- (4) ~~D~~. Minimum front setback: 25 [feet].
- (5) ~~E~~. Minimum side setback: 25 [feet].
- (6) ~~F~~. Minimum rear setback: 25 [feet].
- (7) ~~G~~. Minimum setback from shoreline: zero feet for functionally water-dependent uses; 75 feet for all other uses.
- (8) ~~H~~. Maximum lot coverage: 25%.
- (9) ~~I~~. Maximum building coverage: 12.5%.
- (10) ~~J~~. Maximum height: 35 feet within 250 feet of the shoreline or upland edge of a wetland; 40 feet elsewhere.
- (11) ~~K~~. Minimum area per family: ~~20,000~~ 30,000 square feet.

*The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:*

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## **Chapter 125 , LAND USE ORDINANCE**

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### **ARTICLE V Site Plan Review**

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**§ 125-68 Shoreland standards.**

- A. Notwithstanding and in addition to any other provisions of this chapter, before granting site plan approval or a building permit for:
  - (1) Any structure built on, over or abutting a dock, wharf, pier or other structure extending below the normal shoreline of a water body or within a wetland;
  - (2) Any land use activity situated entirely or partially within 250 feet, horizontal distance, of the normal shoreline of any great pond or river, within 250 feet, horizontal distance, of the upland edge of a coastal or freshwater wetland, or within 75 feet, horizontal distance, of the normal high-water line of a stream, tributary stream, significant vernal pool as such terms are defined in 38 M.R.S.A. § 435 et seq. and § 125-109 of this chapter.

B. The Planning Board, Code Enforcement Officer or Planning Department, as applicable, must find that the proposed plan will comply with such of the following standards, and all land use activities within the shoreland zone shall conform to the following standards as are applicable:...

(12) Principal and accessory structures. All site plans shall demonstrate that all principal and accessory structures in a shoreland district shall comply with the following:

(a) All new principal and accessory structures shall be set back at least 100 feet, horizontal distance, from the shoreline of great ponds classified GPA and rivers that flow to great ponds classified GPA and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, significant vernal pools or the upland edge of a wetland, and for properties located in the Shoreland General Development III and IV District; except that in a the Shoreland General Development I, and II, and III Districts, the setback from the shoreline shall be at least 25 feet, horizontal distance. In the Resource Protection District, the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district, in which case the setback requirements specified above shall apply. In Stream Protection district any structure associated with a "municipal facility or grounds" or with "uses or small structures accessory to permitted uses or structures" be set back 75 feet, horizontal distance, from the shoreline, unless a variance is obtained from the Board of Appeals. In Resource Protection the setback requirement from the shoreline for wind turbines shall be 250 feet horizontal distance unless a variance is obtained from the Board of Appeals. In the Stream Protection District the setback requirement from shoreline for wind turbines or municipal facilities and grounds shall be 75 feet horizontal distance unless a variance is obtained from the Board of Appeals.

In addition:

- [1] The water body, tributary stream, or wetland setback provision shall not 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.
- [2] Principal and accessory structures are exempt from setbacks from a forested wetland of any size on lots in existence prior to or on September 6, 2005, or from a freshwater wetland less than 10 acres in size on lots in existence prior to or on September 6, 2005.
- [3] For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on coastal bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff Map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a highly unstable or unstable bluff, or where the top of the bluff is located, the applicant may, at his or her expense, employ a Maine registered professional engineer, a Maine certified soil scientist, a Maine state geologist, or other qualified individual to make a

determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

- [4] On a nonconforming 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 80 square feet in area nor eight 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.
- (b) Notwithstanding the dimensional, setback and coverage requirements of the applicable district and the requirements of § 125-67H, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer for structures 400 square feet or less in area and from the Planning Board for structures greater than 400 square feet in area to provide shoreline access in areas of steep slopes or unstable soils provided that the structure is limited to a maximum of four feet in width; that the structure does not extend below or over the normal high water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.
- (13) Clearing or removal of vegetation for activities other than timber harvesting. All site plans shall demonstrate that clearing of vegetation for purposes of development shall be accomplished in accordance with the following:...
- (b) Except in areas as described in Subsection B(13)(a) above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet, horizontal distance, inland from the normal high water line of a great pond classified GPA or a river flowing to a great pond classified GPA, 75 feet, horizontal distance, from any other water body, tributary stream, stream, significant vernal pool or the upland edge of a freshwater wetland, and 25 feet from the upland edge of a forested wetland, a buffer strip of vegetation shall be preserved as follows:...
- [3] In order to protect water quality and wildlife habitats, ~~adjacent to great ponds classified GPA, and streams and rivers which flow to great ponds classified GPA,~~ existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed except to provide for a footpath or other permitted uses as described in Subsection B(13)(b)[1] and [2].
- (17) Parking areas. All site plans shall demonstrate that any parking areas associated with proposed development in a shoreland district shall comply with the following requirements:

- (a) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities in districts other than Shoreland General Development I and II districts shall be no less than 50 feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

*The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:*

[Please Note: Old language is ~~stricken~~. New language is underlined.]

## **Chapter 125 , LAND USE ORDINANCE**

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### **ARTICLE V Site Plan Review**

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#### **§ 125-69. Standards for particular uses, structures or activities.**

Notwithstanding and in addition to any other provision of this chapter, before granting site plan approval for any land use activity described in this section, the Planning Board must find that the proposed plan will comply with such of the following standards as are applicable:...

- V. Purpose of conditional use. The purpose of this section is to establish procedures and standards to enable the Planning Board to review applications for conditional uses. A "conditional use" is a structure or use that is generally not appropriate in a given district, but with restrictions and if controlled as to location, size and off-site impacts may have no adverse effects upon the public health, safety or welfare, surrounding properties, the natural environment, or on municipal services. The only structures or uses that shall be permitted as conditional uses are those approved as conditional uses by the Planning Board. Conditional use may not be applied to uses in the shoreland districts.

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

## Chapter 125 , LAND USE ORDINANCE

### ARTICLE XII Construction and Definitions

#### § 125-109. Definitions.

The following terms shall have the following meanings:...

#### LOT COVERAGE

Except as otherwise provided in § 125-67B(8), the footprint area of all structures and improvements calculated as a percentage of the area of the lot shall be considered to be lot coverage, including but not limited to principal and accessory buildings; all improved vehicular and pedestrian surfaces, such as parking lots, roads, driveways, maneuvering spaces, and pedestrian walkways, regardless of the construction material employed; ~~or~~ graveled areas and other nonvegetated surfaces. Unimproved natural surfaces of a site shall not constitute lot coverage, regardless of whether they are vegetated. Boats stored in cradles above an unimproved natural surface shall not constitute lot coverage. However, in the case of lumber yards, areas of stored lumber shall constitute lot coverage.

**Appendix C  
Table of Permitted Uses**

	Downtown Residential	Educational Institution	Emery	Hulls Cove Business	Hulls Cove Residential Corridor	Hulls Cove Rural	Indian Point Residential	Indian Point Rural	Industrial	Ireson Hill Corridor	Ireson Hill Residential	McFarland Hill Residential	McFarland Hill Rural	Marine Research	Otter Creek	Resource Protection	Salisbury Cove Corridor
Accessory dwelling	C		C	C	C	C	C	C		C	C	C	C		C	<del>C</del>	C

**EXPLANATION:**

In 2012, the Department of Environmental Protection issued a Department Order (# 04-2012) that outlined specific areas in the Bar Harbor Land Use Ordinance which were not consistent with the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances. The amendments in this warrant article are necessary to be in compliance with the Mandatory Shoreland Zoning Act.

Given under our hands and seal at Bar Harbor this twentieth day of March 2018.

**Municipal Officers of the Town of Bar Harbor**

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Paul A. Paradis, Chair

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Gary Friedmann, Vice Chair

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Peter St. Germain

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Matthew A. Hochman

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Stephen Coston

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Erin E. Cough

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Judith C. Noonan