

**Frequently asked Questions on Planning Board Ordinances and Procedures**

There are recurring themes to the questions asked of the Planning Board or its Chair. This year we have begun to answer those questions in as generic form as possible. We are therefore starting this list of questions and answers to help applicants to the Board and property owners understand how the Board functions and how it administers the two separate zoning ordinances assigned to it. The first ordinance is referred to as the **Town Zoning Ordinance** which was first adopted in 1974. The second Ordinance is referred to as the **State-mandated Shoreland Zoning Ordinance** that was imposed on the Town in 1995. The information provided below is general guidance only. The exact interpretation of the Ordinances is subject to the specific facts of a case and a full vote of the Planning Board. The FAQs listed below are excerpted from written replies to questions from Applicants or potential Applicants to the Board.

**Are there restrictions on what trees and bushes can be cut on my land?**

There are a lot of restrictions on cutting, particularly in the Shoreland Zone, which extends 250' from the high water mark of the ocean, Long Pond, Merchant Brook, two large bogs on the island. Where there are conflicting requirements between the Town Ordinance and the State Ordinance, the stricter of the two requirements governs:

Town of Isle au Haut Zoning Ordinance

VI L. *Timber Harvesting*

1. No substantial accumulation of slash shall be left within fifty (50) feet of the normal high water mark of any pond, river, or salt water body as defined. At distance greater than fifty (50) feet from the normal high water mark of such waters and extending to the limits of the area covered by this Ordinance, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground.
2. Skid trails, log yards, and other sites where the operation of logging machinery results in the exposure of substantial areas of mineral soil shall be located such that an unscarified filter strip is retained between the exposed mineral soil and the normal high watermark of any pond, river, or salt water body as defined. The width of this strip shall vary according to the average slope of the land as follows:

Average Slope of Land between Exposed Mineral Soil and Normal High Water Mark (percent)	Width of Strip Between Exposed Mineral Soil and Normal High Water mark (Feet along Surface of the Ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145

3. Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.
4. Harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained.
5. Harvesting activities shall not create single opening greater than seven thousand five hundred (7,500) square feet in the forest canopy.
6. In any stand, harvesting shall remove not more than forty (40) percent of the volume of trees in any ten (10) year period. For the purpose of these standards, a stand means a contiguous group of trees, sufficiently uniform in species, arrangement of age classes, and conditions, to be identifiable as a homogeneous and distinguishable unit.

### State of Maine Mandated Shoreland Zoning Ordinance (Land Use Standards)

#### Clearing of Vegetation for Development

1. Within a shoreland area zoned for Resource Protection abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

2. Except in areas as described in Paragraph 1, above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (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, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
  - a. There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed ten (10) feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through, the buffer strip is not created. Adjacent to a great pond classified GPA, or stream or river flowing to a great pond classified GPA, the width of the foot path shall be limited to six (6) feet.
  - b. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. For the purposes of this section a “well-distributed stand of trees and other vegetation” adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be

defined as maintaining a rating score of 12 or more in any 25-foot by 25-foot square (625 square feet) area as determined by the following rating system.

<u>Diameter of Tree at 4-1/2 feet Above Ground Level (inches)</u>	<u>Points</u>
2 - 4 in. ....	1
>4 - 12 in. ....	2
> 12 in. ....	4

Adjacent to other water bodies, tributary streams, and wetlands, a “well-distributed stand of trees and other vegetation” is defined as maintaining a minimum rating score of 8 per 25-foot square area.

Note: As an example, adjacent to a great pond, if a 25-foot x 25-foot plot contains three (3) trees between 2 and 4 inches in diameter, three trees between 4 and 12 inches in diameter, and three trees over 12 inches in diameter, the rating score is:

$$(3 \times 1) + (3 \times 2) + (3 \times 4) = 21 \text{ points}$$

Thus, the 25-foot by 25-foot plot contains trees worth 21 points. Trees totaling 9 points (21 - 12 = 9) may be removed from the plot provided that no cleared openings are created.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- c. In order to protect water quality and wildlife habitat, adjacent to great ponds classified GPA, and streams and rivers which flow to great ponds classified GPA, existing vegetation under three (3) feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as described in paragraphs 2 and 2a. above.
- d. Pruning of tree branches, on the bottom 1/3 of the tree is permitted, except within 75’ of Long Pond.
- e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Cleared areas shall be limited to the minimum area necessary.

- 3. At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified. GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, except to allow for the development of permitted uses, there shall be permitted on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development

of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, 25 % of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously developed. This provision shall not apply to the General Development or Commercial Fisheries/Maritime Activities District.

4. Cleared openings legally in existence on the effective date of this Ordinance may be maintained, but shall not be enlarged, except as permitted by this Ordinance.
5. Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

### **Can dead trees or trees endangering people or property be cut?**

Dead trees may be cut, but within the State-mandated Shoreland zone, Section 15(P)2(e) of the State Ordinance states:

- e. **In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.**

This paragraph applies to groups of dead trees, which, when cut, create openings. These openings must be replanted. It is our opinion that cutting of single scattered dead trees would not require replanting.

The most restrictive zone is the Town Resource Protection Zone within 125' of the Pond. The Town Ordinance is silent on dead trees, but we believe they should be treated in the same fashion as described in the State-mandated Ordinance. Dead trees are a fire hazard and are not serving the same function as live vegetation in the preservation of water quality<sup>1</sup> so removal of dead trees will allow live vegetation to grow in its place and do a better job of maintaining pond water quality. However, it should be noted that single dead trees serve important functions as food sources (e.g., insects that can be reached by woodpeckers) and habitat for birds, squirrels and other cavity-dwelling wildlife. Therefore, total removal of all dead trees in an area could have detrimental effects on wildlife. We therefore urge discretion in the selection of dead trees for removal.

### **Is pruning or trimming of limbs of live trees allowed in the Shoreland Zone?**

Pruning is covered in the State Ordinance on the bottom 1/3<sup>rd</sup> of trees (Section 15(P)2(d) of the State Ordinance), except that pruning is not permitted within 75 feet of a resource protection zone, including Long Pond.

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<sup>1</sup> The major intent of both State and Town Ordinances as it applies to tree cutting appears to be protection of water quality. When trees die, their root systems also decay and die, reducing their ability to hold soil and prevent erosion and sedimentation.

## **Are there standards for Sediment and Erosion Control?**

Yes, there are and although they can be very site-specific, there is a general set of standards that would apply in most cases. The specific Ordinance requirement, which the Planning Board applies for any permit requiring ground disturbance, whether it is in the Shoreland Zone or not, comes out of the Shoreland Zone Land Use Standards:

### **Erosion and Sedimentation Control**

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - f. Mulching and revegetation of disturbed soil.
  - g. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - h. Permanent stabilization structures such as retaining walls or riprap.
2. In order to create the, least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
  - a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order

to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

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To see the complete “Best Management Practices (BMPs)” used as the Standard by the Maine Department of Environmental Protection (also used as the BMPs by the Planning Board for all land disturbance activities) go to the Maine DEP website through the following link:

<http://www.maine.gov/dep/land/erosion/escbmps/>

In that set of standards you will find a checklist and requirements for a formal sediment and erosion control plan, specifications for silt barriers such as hay bales and filter fabric silt fencing, and standards for more elaborate measures that may be needed such as level spreaders and storm-water detention basin design. Design of sediment and erosion control measures is not something that a normal person without engineering training could do, so please retain a qualified professional to help with all but the simplest of plans. Earthwork and erosion control measures done in the Shoreland Zone must be done by a contractor certified by the Maine DEP to do that work.

**Who do I contact if the Ordinance specifies that a permit is issued by the CEO (Codes Enforcement Officer)?**

If you are outside of the Shoreland Zone, the Town Ordinance identifies the Chairman of the Planning Board as the CEO. The current Chair (6/20/15) is Robert Gerber and his numbers are: 207-335-2015 during the summer months; 207-838-1418 year-round, and email: [Aframe73@gmail.com](mailto:Aframe73@gmail.com) year-round. Mailing applications to the Town is not efficient and may result in them becoming lost. Written applications can either be dropped off at Gerber’s house (gray cape at the entrance to Turner Cove road on the east side) or scanned as a PDF and emailed to him. Emailing a PDF is preferred as it makes it easier to send it around to the other Planning Board members.

If you are applying for a permit issued by the CEO in the Shoreland Zone, you must contact a State-certified CEO. The Town currently employs by contract on a case-by-case basis the following person, whom you should contact directly:

Douglas Stover, Kingdom Road, Blue Hill, 207-374-2032

If you are applying for a Plumbing Permit for a septic system, the Town uses for following Local Plumbing Inspection (LPI):

Mr. Roger Stone, LPI  
P.O. Box 394  
Stonington, ME 04681  
207- 367-2601

**Does road construction require a permit and what if the road is only temporary such as to get access to a well drilling site?**

Road construction anywhere in Isle au Haut (including driveway construction) requires a permit from the Planning Board. A “temporary” road requires a permit the same as a permanent road would.

**Does drilling a well require a permit?**

If an existing well is being rejuvenated or fracked, then no permit (considered maintenance); If a new well on land that previously had no well, as long as a new road is not built and any damage to the ground is contained by silt fencing and the ground is replanted then no permit is required. If a new dwelling is being built and they have a building permit from the PB and a well is shown on the plan, then the well is considered to have been approved as part of the BP. If no building permit has been issued for a lot and a road has to be constructed to get to the well drilling site, then the Ordinance says the Planning Board has to approve the road construction (in any zone). In the Town Ordinance a well is not considered a structure, so the only thing triggering a permit requirement would be road construction. In the Shoreland Zone, however, the definition of structure would include a well (which would be an "accessory structure") and the State Shoreland Ordinance says that the CEO approves those. There is one other condition under both the town and state ordinance that would trigger a permit and that is if there is over 10 CY of filling or excavation required to prepare the well drilling site. Also, for the State Ordinance, there is a limit of the amount of clearing that can be done in the Shoreland Zone and that is 10,000 square feet of forest canopy opening so creating a path and opening for the well of over 10,000 square feet in a virgin Shoreland Zone site would not be allowed.

**Does installing utility powers and overhead wires or putting in underground power and telephone require a permit?**

Under the Town Ordinance, a Planning Board permit is required for "public utilities" although a pole is not considered a "structure" under the Town Ordinance and there is no definition of a "public utility". Since at the time the ordinance was developed, the only "public utility" on the island was the electric power company, we would have to conclude that they meant to include power poles and power lines since that is basically, by logic, all that they could have included. As with the well, if the extension of power and telephone was listed in the building permit, then no additional permits would be required, presuming the utility extension came from an adjacent public right-of-way. Replacement or maintenance of existing lines do not need a permit. In all other cases a permit is required.

**What can be done with non-conforming uses (i.e., grandfathered uses located in a zone that would currently not permit those uses)?**

Dealing with non-conforming uses is a difficult subject and usually requires knowledge of specific facts as to when a structure was built, whether it has been used every year since it became non-conforming, etc. The guidance below was given with respect to specific questions on specific non-conforming buildings in the Shoreland Zone and a Town Resource Protection Zone adjacent to Long Pond.

- 1) Under its definition of “building” and the 3<sup>rd</sup> paragraph of Section III (Exclusions) of its Ordinance, a “sea plane” ramp, so-called, is a non-conformance use and cannot be rebuild

unless it was used or maintained at least once in every twelve-month period since it was made non-conforming by Ordinance. The Town uses the term “structure” to include buildings and other things according to its definition: “Anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind.” The State Ordinance defines structure as: “ anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks and satellite dishes.”

Although a “ramp” is not something normally associated with the term “occupancy”, the Ordinance makes it clear that any above-ground man-made structure is a “building” and that no new “building” may be located within 125’ of the Pond. Once the grandfathered status of a “building” lapses for more than 12 months, it may not be re-built unless moved more than 125 feet from the Pond.

- 2) We consider a lateral (i.e., sideways) expansion of a non-conforming boathouse a new “building” in a zone in which the Town does not permit new buildings. However, a vertical expansion might be considered, subject to the 50% rule stated in the Shoreland Zoning Ordinance, which the Town must also enforce. As to the replacement of existing sills and flooring, there are two aspects to consider. First, the jacking up of the building and replacement of sills would require outdoor work and disturbance of soils. We believe that the Applicant would have to apply to the Maine DEP under the Natural Resources Protection Act (“NRPA”) to do this specific type of work. An Application would also have to be made to the Town for appropriate Sediment and Erosion control measure implementation. As to the replacement of other parts of the building in like kind, such as flooring, we would consider that as “repair” work and consider that in a different light than “expansion” or “improvement” and not subject to the 50% rule as suggested by the DEP. We consider the “boathouse” to be a storage building, and storage of objects can extend for years, so we do not consider 12 or more months passage since the last human entry into the building as a “lapse” of use and therefore as cause for loss of grandfathered status. However, we do not consider any human occupancy (e.g., overnight sleeping, etc.) of the building to be a preserved grandfathered use. As to the 50% rule, we would entertain your suggestions for determining the current appraised value of the boathouse and how the value of “improvements” would be calculated. We consider permitting any vertical expansion subject to the 50% rule, as well as addition of interior partitions or placement of additional windows (as examples, only). So the Board will require detailed plans and specifications for any work proposed on the boathouse in order to determine whether it is “repair” or “expansion”.
- 3) There is an existing foundation on a lot (although the foundation is outside of the Town’s 125’ RPZ setback, it is within the 250’ setback where the Shoreland Zoning Ordinance applies). If you wish to do any work on the building or around it, you must tell the Board of its proposed use and plans must be provided to show what the proposed final grading, clearing, vegetation planting, etc., around the building will be and how the detailed plans for sediment and erosion control will be designed, installed, and maintained. Note that the lot is only approved for one single family dwelling at this time so if this is proposed to be a dwelling, provide the Board with detailed plans for connecting the building to the proposed septic system.



**Can any new Commercial Uses be located within the Shoreland Zone?**

No. The State-mandated Shoreland Zoning Ordinance has zoned the entire shoreline as either “Limited Residential” or “Resource Protection”. Such uses as the Store are non-conforming uses and technically cannot be expanded laterally, nor the use be changed to another different commercial use.