

MEMORANDUM

To: Town Council

From: Albert Farris, Code Enforcement Officer
Theo Holtwijk, Director of Long-Range Planning

Date: April 8, 2009

Re: Proposed Shoreland Zoning Amendments

Recommendation

- On March 26, 2009 the Long Range Planning Advisory Committee (LPAC) voted unanimously to recommend to the Town Council adoption of proposed amendments to the Falmouth Zoning Ordinance and map pertaining to Shoreland Zoning. The Council is asked to schedule a public hearing date and ask the Planning Board as the municipal review authority to do the same.

Purpose of the Amendments

- These amendments are intended to meet the State of Maine's mandate that municipalities to adopt a minimum Shoreland Zoning ordinance update to follow its guidelines. The State's Guidelines were revised in 2006.
- The State extended its original deadline of July 1, 2008 for this mandate with one year to July 1, 2009.

Review Process Followed

- LPAC was assigned to provide the Council with update recommendations. It decided to work on these amendments separately from, but be mindful of, the Natural Resource Regulatory project (which addresses vernal pools, wetlands, etc.).
- LPAC met a total of four (4) times on the Shoreland Zoning amendments: 10/30/08, 11/20/08, 1/15/09, and 3/26/09. Theo Holtwijk and Al Farris provided staff assistance.
- As a key "road map," staff prepared a 100+ page color-coded comparison document that laid the Town's existing shoreland zoning rules side by side with the updated State guidelines.
- Staff also met at the beginning of the process with Judy Colby-George of Spatial Alternatives and Gary Fogg. Judy worked on the current Shoreland Zoning map and prepared the proposed map update. Gary completed a 1992 Drainage Study for the Town. Staff wanted to make sure it understood the origins of the current map and would not inadvertently propose to change anything that should remain unchanged.
- Lastly, staff met twice with Mike Morse, DEP Shoreland Zoning Coordinator for this area, once at beginning of the process and once again towards the end. Mike provided useful clarifications and written review comments on the proposed draft amendments.

Overview of Proposed Amendments

Shoreland Zoning Map

LPAC reviewed the current Shoreland Zoning Map and decided to keep it essentially “as is.” The following issues were reviewed and responded to:

- Previous State Guidelines referenced a 1973 map by the Department of Inland Fisheries and Wildlife (IF&W) that showed non-forested freshwater wetlands that were rated moderate/high value. This map was replaced by a 2006 version. Only very slight changes impact a wetland in West Falmouth. (See section 7.13.a.1 for the new reference.)
- The new guidelines reference Coastal Bluff maps by the Maine Geological Survey. This reference was incorporated in section 7.25.e. Judy Colby-George prepared a more legible bluff map to show which properties are classified by the State as “highly unstable” or “unstable.” The required 100 feet building setback in those areas is to be taken from the top of the bluff instead of from the normal high-water line. The bluff map will alert the Code Enforcement Officer and property owners to make sure a field verification is conducted to confirm appropriate setbacks are maintained. The designation affects about 50 properties in Falmouth. Without field verification it cannot be determined how many existing buildings may be affected with the new setback requirement.
- Two areas are proposed to be deleted from the Shoreland Zoning map. The first one is adjacent to the Presumpscot River. This area used to be in the Town of Falmouth, but was a few years ago transferred to the City of Portland. The second area is associated with a specific floodplain near the Cumberland line. This area was deemed by the DEP to be inconsistent with the shoreland language.
- The overall map was simplified into four basic Shoreland District categories instead of the dozen or so categories of the current version. Although the underlying geographic basis remains the same, the new map will improve readability and user application.
- In the course of this work, LPAC also reviewed the hydrography of the USGS quadrangle map, photogrammetry from 2001 aerial photos, and 1992 Natural Drainage study. It observed that there are discrepancies in the presence and location of various streams. LPAC realized that these discrepancies cannot be resolved without a complete town-wide review of all streams. Field verification is anticipated in most Shoreland Zoning applications. Actual regulation is by ordinance definition.

Most of the text amendments that the State adopted in 2006 are administrative in nature and many small proposed edits appear throughout the text. Some of the major text amendments can be summarized as follows:

Section 2 – Definitions

- The definition of “stream” is proposed to be amended to follow the same definition as in the State’s Natural Resources Protection Act (NRPA). While this encompasses more streams than is required under the State’s Shoreland Zoning Guidelines, the Town of Falmouth also uses the word “designated.”
- Only if a stream is “designated,” i.e. shown on the Shoreland Zoning map, is it regulated under the Shoreland provisions. Other streams that do not appear on the Shoreland map are regulated elsewhere in the ordinance as they are currently.

Section 6 – Nonconforming Structures, Uses and Lots

- This section has some new parts that were not included before, but which the DEP felt were important. They provide additional guidance.

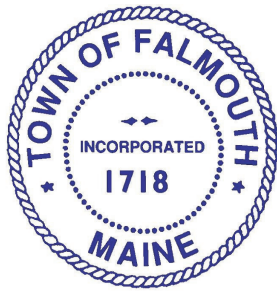
Section 7 – Shoreland Zoning

- Administrative sections 7.4 – 7.8 and 7.10 have been moved from the rear of this chapter to the front.
- Section 7.9 Special Exceptions is new and comes from the State’s Guidelines as an allowance has been made for new single family structures in the Resource Protection District by special exception (see Table 1). The current ordinance prohibits this use in this zone.
- Section 7.13.a.6 is proposed to be eliminated as it defined other areas that “may” be included. However, those areas were not clearly defined and may cause unclear interpretation. Most of these areas are already included in the Resource Protection District.
- The use amendments in table 1 were by specific request of DEP.
- Section 7.15.A is a new section from the Guidelines as requested by DEP.
- Although Falmouth does not permit campgrounds, section 7.17 was left in place in the event that the Town may do so in the future.
- The first two paragraphs of section 7.18.a are proposed to be deleted as they implied to the DEP that the Town permitted more lenient tree cutting in a 50 feet wide strip adjacent to the Presumpscot River and Mill Creek than further away from it where cutting is only allowed for the few uses that are allowed in the Resource protection District.
- Section 7.20 “Mineral Exploration and Extraction” has been made more inclusive. “Extraction” is not part of the current Shoreland Ordinance.
- Section 7.25.d makes it clear that there is a 250 feet setback in the Resource Protection District, except for those structures and roads specifically allowed in that district (in which case the standard 100 feet applies).
- Section 7.25.h addresses specific standards for retaining walls.
- Section 7.27 addresses Timber Harvesting. The Legislature has given municipalities three options for addressing Timber Harvesting. The first option is that a municipality may choose to repeal the local regulation of timber harvesting in the shoreland zone and cede that role to the Department of Conservation’s Maine Forest Service. The second option that a municipality can choose is to adopt the state-wide timber harvesting standards verbatim. The third option is that a municipality can elect to keep the same timber harvesting standards that have been in its ordinance in recent years. However, if the last option is chosen, the municipality will not receive assistance with the enforcement of the standards from the Maine Forest Service. Most municipalities that have done so have chosen to repeal local regulation of timber harvesting activities in the shoreland zone. LPAC discussed these options with Code Enforcement Officer Al Farris. While the enforcement by the Maine Forest Service may not be perfect, its assistance in pursuing violations was deemed essential. Option One (repeal of the local standards) is recommended. This repeal will only take effect once a certain number of Maine municipalities have taken the same action. A note to that effect has been placed at the beginning of this section.
- Sections 7.29 and 7.30 are new and address individual private campsites and essential services, respectively.

Section 8 – Board of Zoning Appeals

- Section 8.6 is proposed to be amended to make it clear that access improvements for a person with a disability can only be made to a dwelling and not the property.
- Section 8.8 requires the Town to send a copy of any shoreland zoning variance request to the DEP.

Staff will be happy to answer any questions that the Council may have. Thank you.



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