

Warehouse and Storage Facility: A land area where goods or materials are stored in a warehouse facility and/or in specific outdoor areas.

Warehouse Facility: An enclosed structure used primarily for the storage of goods or materials. Outdoor storage is not permitted.

Water Body*: Any river, stream or tidal area.

Wetland*: A freshwater or coastal wetland, excluding forested wetland.

Wetlands Associated with Rivers*: Wetlands contiguous with or adjacent to a river and, which during normal high water, are connected by surface water to the river. Also included are wetlands which are separated from the river by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high water line of the river. Wetlands associated with rivers are considered to be part of that river.

Wireless Telecommunications Facility: A facility that transmits, receives, distributes, provides or offers telecommunications services, radio or television signals, or any other spectrum-based transmissions/receptions, together with the facility's associated antennas, microwave dishes, horns, cables, wires, conduits, ducts, lightning rods, electronics and other types of equipment for the transmission, receipt, distribution or offering of such signals, wireless telecommunication towers, antenna support structures and other structures supporting said equipment and any attachments to those structures including guy wires and anchors, equipment buildings, generators, parking areas, utility services, driveways and roads and other accessory features.

Wireless Telecommunication Facility Co-Located: A wireless telecommunications facility that includes a telecommunication tower or building supporting one or more antennas, dishes, or similar devices owned or used by more than one public or private entity.

Wireless Telecommunication Tower (Tower): Any new or existing ground mounted or structure mounted pole, spire, structure or combination thereof, designed and constructed primarily for the purpose of supporting, fixing or attaching one or more antennas, including supporting lines, cables, wires, braces and masts. The term includes but is not limited to, radio and television transmission towers, microwave towers, common carrier towers, cellular towers, personal communications service towers, and other similar towers.

Yard: An open space that lies between the required setback of the principal or accessory building(s) and the nearest lot line. Such yard is unoccupied and unobstructed from the ground upward except as may be specifically provided in this Ordinance.

Public sewer pump stations shall be designed to be as unobtrusive as possible through the use of such measures as landscaping and buffering.

Section 202. Non-Conformance

- A. Continuation of Non-Conformance: The lawful use of any building, structure, or land which is made nonconforming by reason of the enactment of this Ordinance, or which shall be made nonconforming by reason of a subsequent amendment, may be continued, subject to the following provisions:
- B. Non-Conforming Uses
1. Repairs and Alterations: A building or structure devoted to a non-conforming use may be repaired, maintained or improved, provided the number of square feet of floor area devoted to the non-conforming use is not increased except in accordance with the provisions of Section 202.C.(5). A non-conforming use may not be reconstructed except in accordance with the provisions of Section 202.C.(2);
 2. Extension of Use: The Zoning Board of Appeals may grant a variance for a one-time expansion of a non-conforming use up to a maximum of 15% of the gross floor area of the existing structure(s). A non-conforming open use of land may not be extended to any part of the remainder of the land except that excavation existing on January 16, 1990 may expand without a variance if such expansion is allowed under Section 509 of this Ordinance;
 3. Change in Use: A non-conforming use of a building, structure or land may be changed to another non-conforming use only when the impact of the new use on adjacent properties, water bodies wetlands, and upon the Town is less adverse than the impact of the former use and a permit is issued for such change by the Codes Enforcement Officer applying the standards of and utilizing the procedures of Section 602. Upon such a change in use, the prior use shall be deemed abandoned. Whenever a non-conforming use is changed to a permitted use, such use shall not thereafter revert to non-conforming status;
 4. Abandonment: A non-conforming use of a building, structure or land shall be considered abandoned if, in the case of a building or structure, it remains vacant for a period of eighteen (18) months, and in the case of an activity, it ceases for a period of eighteen (18) months. Subsequent use shall conform to the regulations specified in this Ordinance for the district in which it is located.
 5. Use Begun Prior to Ordinance: Nothing herein contained shall require any change in plans, construction or structure, the construction of which shall have been diligently prosecuted previous to the date of enactment of this Ordinance, provided complete plans for such a use, building or structure shall have been timely filed with and accepted by the Codes Enforcement Officer;

6. In the Shoreland Zones the following additional requirements shall be met. In the case of a conflict with another provision of this Ordinance, the standards of this section shall prevail *{Amended, Effective 07/01/09}*

a. Resource Protection I: A residential use which becomes non-conforming as a result of its location under this Ordinance in a Resource Protection I District may be expanded, reconstructed, or accessory buildings added, if the Codes Enforcement Officer determines that the project meets the criteria listed in Section 602.F.1.L. of the Site Plan Review regulations and the requirements of Section 507 and is subject to the restrictions described below:

- a. Total lifetime expansion on the parcel is limited to the addition of 500 square feet of gross floor area to buildings existing as of September 7, 1988. If any portion of the expansion is located within the required shore setback, that portion may be expanded by no more than 30 percent of the floor area existing within the setback area and no more than 30 percent of the volume existing within the setback area, and only upon the granting of a variance by the Zoning Board of Appeals.
- b. A seasonal use shall not be converted to a year-round use;
- c. The expansion shall not increase the non-conformance of any existing shore setback.
- d. If the Zoning Board of Appeals grants a setback variance request under the Sec. C.1. below, it shall be counted in the maximum total lifetime expansion area permitted.

b. All other Shoreland Zones: -

(1) Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining approval from the Board of Appeals, be expanded within the existing residential structures or within an expansion of a structure as allowed in Sec. 202.C.1 Expansions below.

(2) Resumption prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use.

Notwithstanding anything to the contrary in this Ordinance or Section 302 of Title 1 of MRSA, this Section 202.B.(6) shall apply to any application for any permit or approval filed on or after September 7, 1988.

C. Non-Conforming Buildings

1. Expansion: *{Amended, Effective 07/01/09}*

In the Shoreland Area a non-conforming structure may be added to or expanded after obtaining a permit from the Codes Enforcement Officer, if such expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below:

- a. If a non-conforming building or structure lies partially or entirely within the required shore setback, no variance shall be granted which would permit the building or structure to expand in a manner that would reduce the shortest existing non-conforming setback from the shore.

For purposes of this section, when determining the setback line, if minor attachments such as stairs, landings and basement bulkhead doors are within the required shore setback for buildings or structures, expansions of the main portion of the building or structure toward the front edge of these minor attachments shall not be permitted.

New stairways for the sole purpose of gaining access to, or egress from, a building or structure need not be considered when determining its setback, provided that the stairway and landing, if any, is no wider than five feet and extends no closer to the water than is necessary to accomplish its purpose. If the elevation at the top of the stairway or landing is greater than four feet above ground level, the stairway must be constructed such that it parallels the wall of the building or structure rather than extending toward the shoreline.

- b. After January 1, 1989, if any portion of a building or structure is less than the required shore setback, the Zoning Board of Appeals may, during the lifetime of the building or structure, grant a variance for expansion to expand within the setback area by a maximum of 30% of the gross floor area or volume of that portion of the existing building or structure within the setback area provided, however, that the footprint does not expand by more than the lesser of 600 square feet or 30% of the gross floor area of the existing building or structure within the setback area and the existing non-conforming shore setback is not decreased. These provisions shall not restrict expansion of portions of a building or structure located outside of the required setback. If a replacement structure conforms with the requirements of Sec.202.4 below, and is less than the required shore setback, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.
- c. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest extent practical extent as determined

by the Codes Enforcement Officer, basing its decision on the criteria specified in Sec. 202.4 below. If the completed foundation does not extend beyond the exterior dimensions of the structures, except for expansion in conformity with Sec. 202.1 above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from the original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

2. Reconstruction or Replacement: If a non-conforming building or structure is destroyed or damaged by less than 50% of the market value of the structure before the damage regardless of the cause, the owner retains the right to rebuild or restore the non-conforming building or structure provided that a permit is obtained within a period of twelve (12) months, or thereafter conform with the space requirements of this Ordinance unless a variance from such requirement is granted by the Board of Appeals.

If a non-conforming building or structure is destroyed or damaged by more than 50% of its value regardless of the cause, the building or structure may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of said damage, destruction, or removal, and provided compliance with all setback requirements is met to the greatest practical extent as determined by the Codes Enforcement Officer in accordance with the purposes of this Ordinance. In no case shall a building or structure be reconstructed or restored so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed in Sec. 202.1 Expansions, above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the required setback for the new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Sec.202.4 below.

In determining whether the building or structure reconstruction or restoration meets the shore setback to the greatest practical extent, the Codes Enforcement Officer shall consider, in addition to the criteria in Section 602.F.1.L. below, the physical condition and type of the existing foundation, if any, and whether it is reasonably feasible to relocate it. *{Amended, Effective 07/01/09}*

3. Use of Non-Conforming Building: Notwithstanding any space and bulk requirements of this Ordinance, a non-conforming building or structure may be used for any use allowed in the zoning district where it is located, unless the definition of such use contained in Section 104 of this Ordinance or the district regulations contain specific dimensional requirements peculiar to the use which cannot be met in the existing structure or on the existing lot.
4. Relocation: In the Shoreland Zone, a non-conforming building or structure may be relocated within the boundaries of the parcel on which the building or structure is located

provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Board of Appeals and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules) or that a new system can be installed in compliance with the law and said Rules. In no case shall a building or structure be relocated in a manner that causes it to be more non-conforming.

In determining whether the building or structure relocation meets the setback to the greatest practical extent, the Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings and structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the required setback in order to relocate a structure, the Codes Enforcement Officer shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five (5) trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must be similar in nature to the native vegetation and/or ground cover that was disturbed, destroyed or removed.

- b. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof. *{Amended, Effective 07/01/09}*
5. Construction Begun Prior to Ordinance: Nothing herein contained shall require any change in plans, construction or structure, the construction of which shall have been diligently prosecuted previous to the date of enactment of this Ordinance provided complete plans for such a building or structure shall have been timely filed with and accepted by the Codes Enforcement Officer.
 6. Residential Dwelling: Any existing residential dwelling and accessory buildings which, at the effective date of adoption or amendment of this Ordinance, becomes non-conforming because of failure to satisfy either the use standards or the space standards of the district in which it is located, may be extended or expanded or reconstructed provided

that said extension, expansion or reconstruction is in compliance with all provisions of this Ordinance.

7. Hotels and Motels: Upon approval of a site plan by the Project Review Board, a hotel or motel which existed on July 5, 1995 and which at any time thereafter is non-conforming because it exceeds the maximum number of units allowed by the district regulations may increase the number of units by up to 30 units more than the number existing on July 5, 1995 and may, in connection with such increase, expand accessory facilities such as restaurants, meeting rooms and recreational facilities. Such increase or expansion shall not be considered an extension of use subject to Section 202 (B)(2). An increase or expansion under this Paragraph 7 shall preclude any further increase or expansion under Section 202 (B)(2). As used in this Paragraph 7, "unit" means every room which provides sleeping accommodations for guests, except that a suite of no more than two rooms may be counted as a single unit provided the rooms share an entry from the exterior or an interior common area and share one toilet facility which is accessible only from within that group of rooms.

D. Non-Conforming Lots of Record:

1. A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the minimum lot size, minimum road frontage and/or minimum shore frontage of the district in which it is located, may be built upon without a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership and provided further that all other provisions of this Ordinance are met, except that the minimum land area per dwelling unit or mobile home space standard requirement shall not apply to the construction or placement of a single dwelling unit or a single mobile home on such a lot of record;
2. If two or more contiguous lots or parcels are in single ownership of record at the time of adoption or amendment of this Ordinance, or at any time thereafter, and if all or part of the lots do not meet the minimum lot size of this Ordinance, the lands involved shall be considered to be a single parcel for the purposes of this Ordinance, and no portion of said parcel shall be built upon or sold which does not meet the minimum lot size of this Ordinance; nor shall any division of the parcel be made which creates any dimension or area below the requirements of this Ordinance. This subsection (2) shall apply only to lots which have not been improved separately with buildings or structures.

For the purposes of this sub-paragraph, lots shown on a subdivision plan approved by the Planning Board or the Project Review Board and recorded in the Registry of Deeds shall not be treated as lots held in common ownership if, within the three (3) years immediately preceding the effective date of this Ordinance or within three (3) years from the date on which such plan was approved, whichever is later, the owner or his predecessor has improved each lot by the completed construction of roads and the installation of utility services.

Section 203. Changes and Amendments

- A. This Ordinance may be amended and its regulations, boundaries, and district classifications changed by the Town Council at a regular or special meeting pursuant to the following procedures:
1. Amendments or changes may be initiated by the Planning Board, Project Review Board or Town Council, or may be requested by any owner of property (or authorized agent) or other person with equivalent right, title or interest in the property (or authorized agent). Amendments or changes may also be initiated by any person as permitted by the Constitution and laws of the State of Maine;
 2. All requests for amendments to the text of the Zoning Ordinance, or for changes in zone boundary lines, or other requests to change the zoning map, initiated by persons other than the Planning Board, the Town Council, or other Town Boards and Commissioners, shall be accompanied by a fee which shall be set by the Town Council. No such request shall be referred to the Planning Board for public hearing or otherwise considered as a Planning Board agenda item until the required fee has been paid;
 3. For request for amendments or changes shall be referred to the Town Council for consideration until the Planning Board has held a public hearing on that request, notice of which shall be given at least ten (10) days prior to such hearing in a newspaper of general circulation in the Town of Freeport and to all abutters of the affected property if a zoning map change is being considered. Abutters shall include owners of property separated from the affected property by a public or private way;
 4. Submissions: All requests for amendment or changes other than those initiated by the Planning Board, Project Review Board, or Town Council shall include:
 - a. A map showing existing and proposed zone lines;
 - b. Address or exact location of the request;
 - c. Name and address of property owner and applicant;
 - d. Statement regarding existing and proposed land use;
 - e. Existing and proposed zone classification;
 - f. Statement, where applicable, indicating the developer has the financial ability to complete the proposed development.
 - g. If the request is for designation as a MEOD District, the following additional submissions are required:
 - (1) Total project acreage;
 - (2) Approximate acreage and locations of areas to be excavated and areas to be left undisturbed;
 - (3) Locations of wetlands, water bodies, flood zones and environmentally sensitive land as defined in subparagraph (e) of the definition of Net Residential Acreage in Section 104 of this Ordinance;
 - (4) General description of the extraction methods, amount of extraction, shipping procedures and land reclamation.

D. Other Standards Applicable only to uses listed in Sec. 402.II.B.2. above.

1. Non-Conformance: As used in this Subsection 1 and except as otherwise indicated, the words “existing”, “non-conforming”, “legally”, “illegal” and “illegally” shall be applied as of August 21, 1991, and the word “use” shall mean any of the uses listed in Section 402.II.B.2. An existing legally non-conforming use shall not require site plan review in order to continue. An existing legally non-conforming use which is proposed to expand shall require site plan review only for the expansion. An existing use, a portion of which is legally non-conforming and a portion of which has expanded illegally prior to August 21, 1991, shall require site plan review only for the illegal expansion. An illegally existing use shall require site plan review for the entire existing use as well as the any proposed expansion.
2. Except for non-conforming uses or expansions which are exempt from site plan review under Subsection 1 above, all uses listed in Section 402.II.B.2. are subject to the following standards:
 - a. Setbacks: No exterior storage of materials, commercial vehicles used by the business, parking areas or any other exterior indications of the business use shall be permitted in any setback except that plantings rooted in the ground shall be permitted in the side and rear setbacks. In the front setback, in a strip extending along the entire frontage, for a depth of a minimum of fifty (50) feet, except for accessways, landscaping is required.
 - b. Buffering: Buffers shall be provided in the setbacks at the district boundaries, where required. In addition, except as permitted in Section 402.II.D.2.a., buffers are required in the side and rear setbacks of each lot and shall meet the standards listed in Sec. 506.A, B, C and D.
 - c. The performance standards of Article V, where applicable, shall be met. Objectionable conditions such as, but not limited to, noise, smoke, dust, odors or glare shall not be generated by any use, including those otherwise exempt from these standards under Subsection 1 above.
 - d. In addition to the residents of the dwelling unit, no more than two full-time employees or combination of full-time and part-time employees or a number of part-time employees equivalent to the time worked by two full-time employees (a maximum of 80 hours per week) may be employed by the business use and no more than a total of five employees shall be on the site at any one time.
 - e. Size Limitations: The area used by the business shall not occupy more than fifty percent (50%) or 20,000 square feet of the land area of the parcel, whichever is less. Included in this business occupancy area calculation shall be all the primary, accessory, and secondary structures, storage areas, display areas, parking areas and accessory uses areas related to the business activity. Excluded from this business occupancy area calculation shall be all of the residential uses and uses accessory to the residential uses, open space, personal use areas, and all setbacks except for business use accessways.
 - f. The owner of any existing use as defined in Section 402.II.D.1. must register with the Code Enforcement Officer (CEO) within sixty (60) days of the effective date

decision shall require a majority vote of those present and voting. A tie vote shall constitute denial of an appeal.

2. Powers and Duties: Appeals shall lie from the decision of the Codes Enforcement Officer to the Board of Appeals and from the Board of Appeals to the Superior Court according to the provisions of Maine Revised Statutes. The Board of Appeals shall have the following powers and duties:
 - a. Administrative Appeals. To hear and decide where it is alleged there is an error in any order, decision, interpretation, or ruling of the Codes Enforcement Officer in the enforcement of this Ordinance. Action of the Codes Enforcement Officer may be overturned only by a majority vote of those members present and voting.
 - b. Variance Appeals. To hear and decide appeals requesting such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in undue hardship. A variance may be granted only by majority vote of those members present and voting, and may include such conditions and safeguards as are appropriate under this Ordinance. The words “undue hardship” as used in this subsection mean:
 - (1) That the land in question cannot yield a reasonable return unless a variance is granted;
 - (2) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - (3) That the granting of a variance will not alter the essential character of the locality; and
 - (4) That the hardship is not the result of action taken by the applicant or a prior owner.

No variance from the 75 foot setback from a stream in the Shoreland Zone shall be granted unless the Zoning Board of Appeals finds that the criteria under Section 602.F.1.L. are satisfied.

The applicant shall submit specific information to substantiate that the land in question cannot yield a reasonable return.

Except where specifically limited or prohibited, variances may be authorized only for minimum setback, maximum building/lot ratio, parking requirements for housing for the elderly, minimum frontage, minimum area, 15% expansion of non-conforming uses and buildings, and destroyed or demolished non-conforming buildings. Only the minimum variance which will alleviate the hardship shall be granted.

- c. Miscellaneous Appeals. To hear and decide only the following miscellaneous appeals. Such appeals may be granted only by a majority vote of those

members present and voting.

(1) Where uncertainty exists, to determine the precise location of any Zoning District Boundary line as specified in Section 303.3.

- d. Limited setback reduction. To hear and decide requests for a limited setback reduction for a lot in residential use, in order to permit (i) the expansion or enlargement of an existing building or structure, (ii) the construction of a new building or structure which will be accessory to an existing building or structure, or (iii) the construction of a new building or structure on a vacant non-conforming lot of record which can be built upon pursuant to Section 202(D) of the Ordinance.

“Limited setback reduction” means the reduction of a front, side or rear setback (but not a shore setback) by no more than 50% of the requirement of the applicable zoning district regulations; except as allowed in subsection 2 below.. “Lots in residential use” means a lot on which a dwelling has existed for at least three years prior to the date the limited setback reduction is requested or a vacant non-conforming lot of record on which a dwelling is proposed, except that this requirement shall not apply to ground mounted solar panels. A limited setback reduction may be granted only by a majority vote of those members present and voting and may include such conditions and safeguards as are appropriate under this Ordinance. *{Amended, Effective 02/07/12}*

(1) The applicant for a limited setback reduction for buildings and structures except ground mounted solar panels must demonstrate the following: *{Amended, Effective 02/07/12}*

- (i) the existing buildings or structures on the lot were erected at least three years prior to the date the limited setback reduction is requested, or the lot is a vacant non-conforming lot of record which can be built upon pursuant to Section 202(D) of this Ordinance;
- (ii) the limited setback reduction is reasonably necessary to permit the owner or occupant of the property to use and enjoy the property in essentially the same manner as other similar properties are utilized in the zoning district;
- (iii) due to the physical features of the lot and/or the location of existing structures on the lot, it would not be practical to construct the proposed expansion, enlargement or the new structure in conformance with the currently applicable setback requirements;
- (iv) the impacts and effects of the enlargement, expansion or new building or structure on existing uses in the neighborhood will not

be substantially different from or greater than the impacts and effects of a building or structure which conforms to the setback requirements. In determining whether the applicant has met this standard, the Board of Appeals may consider the presence or absence of neighborhood support for or opposition to the request; and

(v) the applicant has not commenced construction of the enlargement, expansion, building or structure for which the limited setback reduction is requested, so that the Board of Appeals is not considering an after-the-fact application.

(2) "Limited setback reduction" means the reduction of a front, side or rear setback (but not a shore setback) by no more than 50% in all zoning districts; except the RR-1, RR-2, and RP-2 Districts where the reduction can be no more than 75% of the requirement of the applicable zoning district regulations. An applicant may request a reduction greater than the allowances provided above if a solar easement, as allowed by MRSA 33 §1401, has been granted by the affected landowner(s). The applicant for a limited setback reduction for ground mounted solar panels must demonstrate the following:

(i) the limited setback reduction is reasonably necessary for obtaining the best possible orientation to the sun.

(ii) due to the physical features of the lot, the location of mature trees and other buildings it is not practical to locate the ground mounted solar panels in conformance with the applicable setback requirements,

(iii) the impacts and effects of the ground mounted solar panels on existing uses in the neighborhood will not be substantially different from the impacts and effects of the ground mounted solar panels if they conformed to the setback requirements. In determining whether the applicant has met this standard, the Board of Appeals may consider neighborhood support or opposition to the project.

{Amended, Effective 02/07/12}

(3) Whenever the Board grants a limited setback reduction, the Board shall prepare a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, indicating that a limited setback reduction has been granted and setting forth the date it was granted. The applicant shall cause the certificate to be recorded in the Cumberland County Registry of Deeds

within 90 days of approval of the limited setback reduction, or the approval shall be invalid.

(4) The granting of a limited setback reduction pursuant to this subsection 601(G)(2)(d) shall not require or be construed as the granting of a variance to relieve hardship. Notwithstanding Section 601(g)(4)(d), the denial of a variance request shall not preclude a subsequent application for a limited setback reduction under this subsection and the denial of a request under this subsection shall not preclude a subsequent application for a variance. If an application for a variance is pending, the Town shall not accept an application for a limited reduction of the same setback dimension on the same property; if an application for a limited setback reduction is pending, the Town shall not accept an application for a variance from the same setback dimension on the same property.

e. Mislocated building appeal. To hear and decide, only by majority vote of those members present and voting, setback reduction appeals in specific cases where existing buildings are found to be in violation of the setback requirements and where the Board concludes it would not serve the public interest to require the building to be relocated or removed and that allowing the building to remain in its existing location would not be contrary to the public health, safety or welfare. Before granting an appeal under this subsection, the Board must find that the setback violation is not the result of a willful, premeditated act or of gross negligence on the part of the applicant, a predecessor in title to the applicant or an agent of either of them. An appeal under this subsection shall permit the existing building or structure to remain, but shall not authorize any expansion, enlargement or relocation of the structure.

3. Conditions attached to Variances

The Board of Appeals may attach such condition(s), in addition to those required by other provisions of this Ordinance, as it finds necessary to insure compliance with all standards and all other applicable requirements of this Ordinance. Violation of any of those conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; hours of operation; operation controls; professional inspection and maintenance; sureties; location of piers and docks; parking and signs; and types of construction.

4. Appeals Procedure

a. When the owner of property or authorized agent is informed by the Codes Enforcement Officer that an appeal is required, an application for the permit shall be filed with the Board of Appeals on forms provided for this purpose. The application shall be accompanied by a filing fee which shall be established by the Town Council, all information which is required for application for a building

permit, and other information required by this section of the Ordinance. The applicant may submit any additional information relevant to the appeal.

An administrative appeal shall be commenced within 30 days of the order, decision, interpretation or ruling of the Codes Enforcement Officer. A variance appeal or miscellaneous appeal which does not allege an error in any order, decision, interpretation, or ruling of the Codes Enforcement Officer may be commenced at any time.

- b. Variance requests within a shoreland zone. 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 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.
- c. The applicant for a variance or a limited setback reduction must present plans drawn to scale showing all lot lines of the property, the location of each existing building or structure and the location of each proposed expansion, enlargement or new building or structure. Upon review of the application, the Codes Enforcement Officer may require the applicant to provide a standard boundary survey showing the foregoing information if the Codes Enforcement Officer determines that the locations of the lot lines relevant to the request for a variance or a limited setback reduction cannot be determined accurately without a survey. In addition, the Board of Appeals, upon review of the application, may require a standard boundary survey and additional information such as, but not limited to, copies of recorded deeds and such other materials as the Board deems necessary to render its decision. The applicant is ultimately responsible for providing documentation and verification of the facts asserted by the applicant, and any decision of the Board based on incorrect or inaccurate information provided by or on behalf of the applicant may be declared invalid by the Board and neither the Board nor the Town shall be stopped from applying and enforcing the provisions of this Zoning Ordinance based on correct and accurate information subsequently discovered.
- d. Before making a decision on any appeal or application, the Board of Appeals shall hold a public hearing within 60 days of receipt of an application. Notice of the nature of the appeal and the time and place shall be published at least seven days in advance of the date of the public hearing in a newspaper of general circulation in the area. Owners of property within 200' from the property which is the subject of the public hearing, the Project Review Board and the Town Manager shall be mailed copies of the notice of hearing at least 10 days in advance of the hearing date. For the purposes of this subsection, the persons against whom municipal property taxes are assessed shall be considered owners of property.