

ARTICLE XI-A SHORELAND PROTECTION DISTRICT

(Adopted March 11, 2003; Amended)

A. AUTHORITY

Pursuant to the authority granted by RSA 674:16 this ordinance is adopted by the town of Antrim in order to protect the public health, safety, and general welfare.

B. PURPOSE

This ordinance establishes standards for the subdivision, use and development of shorelands adjacent to public waters, as defined herein, for the purpose of minimizing degradation of shorelands and assuring retention of the benefits provided by such shorelands. These benefits include: maintenance of safe and healthy conditions; prevention and/or control of water pollution; protection of important fish, bird and wildlife habitat; reduction or elimination of flooding and accelerated erosion; protection of wetlands and their important natural functions; maintenance of water quantity and related stream flows during low flow periods; protection of shoreland cover as a means of maintaining water quality; and the conservation and protection of natural beauty and the scenic qualities which are critical attributes of the State.

C. PERMIT REQUIRED

1. Before any structure is constructed or any land within the protected shoreland is disturbed or altered, permits from both the NH Department of Environmental Services (DES) and the Town of Antrim are required.
2. If a building permit is not required for the project, a zoning permit issued by the Antrim Building Official is nevertheless required in order to do work within the protected shoreland.
3. The property owner/applicant must first receive the DES approval before applying to the Town for approval.
4. A building or zoning permit from the Town assumes compliance with any and all conditions imposed by DES as part of its approval process. The Antrim Building Official will ensure that DES requirements are being met before granting the Town permit.

D. DEFINITIONS

1. "Accessory structure" means a structure detached from any primary structure that is customarily incidental and subordinate to the primary structures, such as, including but not limited to: pump houses, gazebos, woodsheds, storage sheds, patios, tennis courts, detached garages or carports, art studios, animal pens and shelters, or any other outbuilding, paths, paved or gravel driveways or other improved surface, and retaining walls.
2. "Basal area" means the cross-sectional area of a tree measured at a height of 4-1/2 feet above the ground, usually expressed in square feet per acre for a stand of trees.
3. "Boat slip" means a volume of water, 20 feet long, 6 feet wide and 2 feet deep, as measured at normal high water, and located adjacent to a structure to which a watercraft may be secured.

4. "Commissioner" means the commissioner of the department of environmental services or designee.
5. "DES" means the New Hampshire Department of Environmental Services.
6. "Disturbed area," means an area in which natural vegetation is removed, exposing the underlying soil.
7. "Ground cover" means any herbaceous plant which normally grows to a mature height of 4 feet or less.
8. "Marina" means a commercial waterfront facility whose principal use is the provision of publicly available services such as the securing, launching, storing, fueling, servicing, repairing and sales of watercraft, watercraft equipment and accessories.
9. "Municipality" means the incorporated Town of Antrim.
10. "Natural woodland buffer" means a forested area consisting of various species of trees, saplings, shrubs, and ground covers in any combination and at any stage of growth.
11. "Near Shore Buffer Zone" means the zone from the reference line to 20 feet away from the reference line.
12. "Open Porch" means a porch that is supported by pilings or post supports but that does not have permanent foundation walls, insulation or a heat source. The term includes a porch that is screened but does not include a porch that is enclosed in whole or in part with glass or any other material designed or intended to provide a weather-proof barrier.
13. "Ordinary high-water mark" means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high-water mark is not easily discernible, the ordinary high-water mark may be determined by DES.
14. "Person" means a corporation, company, association, society, firm, partnership or joint stock company, as well as an individual, a state, and any political subdivision of a state or any agency or instrumentality thereof.
15. "Primary structure" means a structure that is central to the fundamental use of the property and includes additions, attached decks, attached porches, and all structures that provide living space.
16. "Protected shoreland" means for natural fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies and rivers, and all land located within 250 feet of the reference line of public waters.
17. "Public waters" means
 - a. all lakes, ponds, and artificial impoundments greater than 10 acres in size;
 - b. all fourth order or higher rivers and river segments.

18. "Reference line" means
 - a. For natural fresh water bodies without artificial impoundments, the natural mean high-water mark as determined by DES.
 - b. For artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights, and for water bodies without flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.
 - c. For rivers, the ordinary high-water mark.
19. "Removal or removed" means cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.
20. "Residential unit" means a structure, or portion thereof, providing complete and independent living facilities, including permanent facilities for living, sleeping, eating, cooking, and sanitation which are used in common by one or more persons.
21. "Sapling" means any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4 « feet above the ground.
22. "Shoreline Frontage" means the average of the actual natural navigable shoreline footage and a straight line drawn between property lines, both of which are measured at the reference line.
23. "Shrub" means any multi-stemmed woody plant which normally grows to a mature height of less than 20 feet.
24. "Structure" means anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences.
25. "Subdivision" means subdivision as defined in RSA 672:14.
26. "Tree" means any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4 feet above the ground.
27. "Water Dependent Structure" means a structure that is a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, swimming float, or boat or launching ramp.

E. SHORELAND PROTECTION DISTRICT

The Shoreland Protection District is an overlay which is superimposed over the existing zoning and includes within its boundary the protected shorelands adjacent to all public waters within the municipality.

F. PROHIBITED USES

1. Establishment or expansion of:
 - a. Salt storage yards
 - b. Automobile junk yards
 - c. Solid or hazardous waste facilities
2. No fertilizer, except limestone shall be used within 50 feet of the reference line.

3. Bulk storage of chemicals.
4. Bulk storage of petroleum products or hazardous materials.
5. Excavations as defined in RSA 155-E.
6. Processing of excavated materials.
7. Dumping or disposal of snow and ice collected from roadways or parking areas.
8. There shall be no disturbance of ground cover within the Near Shore Buffer Zone.
9. Accessory structures may not be located within the Near Shore Buffer Zone.
10. Dredging lake bottoms and placing sand in water for beach construction.

G. ALLOWED USES.

1. Public water supply facilities, including water supply intakes, pipes, water treatment facilities, pump stations and disinfectant stations.
2. Public water and sewage treatment facilities.
3. Hydroelectric facilities, including, but not limited to dams, dikes, penstocks, and powerhouses.
4. Public utility lines and associated structures and facilities
5. An existing solid waste facility may continue to operate.
6. Individual sewage disposal systems.
7. Fifty (50) feet beyond the reference line, low phosphate, slow-release nitrogen fertilizer or limestone may be used on lawns or areas with grass.
8. New water access structures shall not use more than 20% of the owner's contiguous shoreline, up to a maximum of 50 feet.
9. New paths, walkways and patios must use pervious surfaces in accordance with the best management practices described in the NH DES Soak Up the Rain Program.
10. Beaches must be flat, while other water access structures must be sloped away from the adjacent surface water and must incorporate methods for diverting surface runoff immediately upslope of the structures, such as swales and planted berms to protect the water quality.
11. Beaches must be designed and constructed in a way that will not contribute sand or sediment to the adjacent surface water. They must be built in a "perched" position on the waterfront – flat and located entirely out of the water, and landward and above a hardened shoreline.
12. Accessory structures may be located between 20 and 100 feet from the reference line, provided that:
 - a. All natural ground covers remain intact;
 - b. Shrubs are trimmed or pruned to no less than three feet in height; and
 - c. The point score as defined in RSA 483-B:9 for trees and saplings is maintained.

H. NATURAL WOODLAND BUFFER

1. Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish, bird and wildlife habitat, and respecting the overall natural condition of the protected shoreland.
2. Within the natural woodland buffer of the protected shoreland under conditions defined in RSA 483-B:9, V the following prohibitions and limitations shall apply:
 - a. Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the 50 percent level. Trees, saplings, shrubs and ground covers which are removed to clear an opening for building construction, accessory structures, septic systems, roadways, pathways, and parking areas shall be excluded when computing the percentage limitations.
 - b. Dead, diseased, unsafe or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under section 7.b.(1).
 - c. Stumps and their root systems which are located within 50 feet of the reference line shall be left intact in the ground, unless removal is specifically approved by the department through the division of water, pursuant to RSA 482-A.
 - d. Dead and living trees that provide dens and nesting places for wildlife are encouraged to be preserved.
 - e. Planting efforts that are beneficial to wildlife are encouraged to be undertaken.

I. SUBSURFACE WASTEWATER DISPOSAL SYSTEMS

1. The design and installation inspections of all individual sewage disposal systems ~~will~~ shall be approved and permitted by DES, including expansions and replacements.

J. EROSION AND SILTATION CONTROL

1. All new structures within the protected shoreland shall be designed and constructed in accordance with rules adopted by the DES pursuant to RSA 541-A, relative to terrain alteration under RSA 485-A:17.
2. New structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.
3. A permit pursuant to RSA 485-A:17, I shall be required for improved, developed or subdivided land within the protected shoreland whenever there is a contiguous disturbed area exceeding 50,000 square feet.

K. GENERAL REQUIREMENTS

13. The minimum size for new lots in areas dependent upon on-site subsurface wastewater treatment systems shall be determined by DES, but in no circumstances be less than the minimum lot size prescribed in the underlying zoning district.
14. For projects in areas dependent upon on-site subsurface wastewater treatment systems, the total number of residential units in the protected shoreland shall not exceed one unit per 200 feet of shoreland frontage. All new lots within the Overlay District which abut a waterbody shall contain a minimum shoreland frontage of 200 feet.
15. Setback. No new primary structure shall be located within 100' of the reference line.
[See comments on the last page.]
5. Building Heights. No structure within the Shoreland District shall exceed 2 1/2 stories or 35' in height as measured from average ground level around the structure to the highest point on the roof excluding chimneys.
6. Parcel Coverage by impervious materials shall not exceed 20%.

L. WATER DEPENDENT USES AND STRUCTURES. The following uses and structures are permitted within the shoreland protection district provided they comply with all applicable local, state and federal regulations.

1. Marinas developed in accordance with the following:
 - a. Minimum shoreland frontage shall be 300' with an additional 25' of shore frontage for each slip.
 - b. Off street parking shall be provided at a rate of 500 square feet per boat slip.
 - c. Submission of an environmental impact study which indicates mitigation measures to minimize potential negative impact on the public waters including but not limited to:
 - i. Measures to be taken to prevent leakage or spills of fuels, lubricants, waste products or other potential pollutants into the public waters.
 - ii. Assurances that impact on wetlands and related sensitive areas and habitats will be avoided.
 - d. Submission of a site plan for review by the planning board which includes location of parking, rest rooms, buildings and related support facilities with assurances that these facilities are permanently available to the project.
2. Docks must be installed according to DES regulations and only seasonal docks are permitted.
3. Swim rafts and moorings must be installed in accordance with all applicable state laws and rules adopted by the NH Department of Safety.

M. CLUSTER OR OPEN SPACE DEVELOPMENTS

1. The grouping of residential units on a parcel within the Shoreland district is permitted and encouraged to the extent that valuable shoreland resources and open spaces are

retained. Such developments should meet the requirements of Article XIV, Supplemental Regulations, Paragraph O.

2. A minimum of 60% of the total parcel shall remain as common open space for the use and enjoyment of the residents and/or the general public. It shall be permanently restricted for open space, agriculture, parks, public easements, recreation or conservation uses by means of an instrument satisfactory to the Planning Board and/or Town Counsel; and said document shall be recorded in the Hillsborough County Registry of Deeds.

N. COMMONLY USED WATER FRONT PARCELS OR LOTS.

Shorefront lots/parcels, which are intended for use for common access by the non-shoreland property owners within the development or subdivision which owns or has control over the common land, shall:

1. Contain a minimum of one acre and an additional one tenth of an acre for each user in excess of ten users.
2. Have a minimum shoreland frontage of 200 feet for the first ten users and an additional 20 feet for each additional user.
3. Have no structures other than toilet facilities, picnic shelters and/or recreational facilities. Necessary leach fields shall be located at least 125' from the reference line.
4. Half the shoreland frontage shall be designated for swimming and shall be separate from boating areas. Swimming areas shall be separated from boating areas by ropes and appropriate marks, subject to the approval of the Safety Services Division of the NH Department of Safety.
5. Off street parking shall be provided on the basis of 300 square feet for each residential unit 1/4-mile or more from the common area which has use of the area.
6. Toilet facilities shall be provided on the basis of one facility each for men and women for each 25 residential units.
7. Impervious cover for roof area, parking lots, access roads, sidewalks and any other similar cover over or on the parcel or lot shall not exceed 10% of the area of the parcel or lot.

O. LAND CLEARING FOR AGRICULTURE PURPOSES

All agricultural activities and operations in the state as defined in RSA 21:34-a and as governed by RSA 430, including the use of animal manure, lime, wood ash, irrigation and the clearing of land for agricultural utilization, and other agricultural technologies, shall be exempt from the provisions of this ordinance, provided such activities and operations are in conformance with the most recent best management practices determined by the United States Department of Agriculture Natural Resources Conservation Service, the United States Department of Agriculture Cooperative Extension Service and the Department of Agriculture. Persons carrying out such agricultural activities and operations in the protected shoreland shall work directly with the local representatives of the above agencies for their particular property.

P. NON-CONFORMING LOTS OF RECORD

Nonconforming, undeveloped lots of record that are located within the protected shoreland shall comply with the following restrictions, in addition to any local requirements:

1. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a single-family residential dwelling and appurtenant accessory structures on it, notwithstanding the provisions of this chapter. Conditions may be imposed which, in the opinion of the commissioner, more nearly meet the intent of this chapter, while still accommodating the applicant's rights.
2. Building on nonconforming lots of record shall be limited to single family residential structures and related facilities, including, but not limited to, appurtenant accessory structures such as walkways and driveways, and water dependent structures such as docks, piers, and breakwaters consistent with state law.
3. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming lots in common ownership without the consent of the owner.

Q. NON-CONFORMING STRUCTURES *[See comments on last page.]*

1. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or remodel the interior design or existing foundation of the nonconforming structure, but shall result in no expansion or relocation of the existing footprint within the waterfront buffer. However, alteration or expansion of a nonconforming structure may expand the existing footprint within the waterfront buffer, provided the structure is not extended closer to the reference line and the proposal or property is made more nearly conforming than the existing structure or the existing conditions of the property. This provision shall not allow for the enclosure, or conversion to living space, of any deck or open porch located between the primary structure and the reference line and within the waterfront buffer.
2. For the purposes of this section, a proposal that is "more nearly conforming" means alteration of the location or size of the existing footprints, or redevelopment of the existing conditions of the property, such that the structures or the property are brought into greater conformity with the design standards of this chapter. Methods for achieving greater conformity include, without limitation, reducing the overall square footage of structural footprints, enhancing stormwater management, adding infiltration areas and landscaping, upgrading wastewater treatment, improving traffic management, or other enhancements that improve wildlife habitat or resource protection.
3. An expansion that increases the sewerage load to an onsite septic system, or changes or expands the use of a septic system, shall require a subsurface approval issued by the department.
4. Under paragraph 1, and except as otherwise prohibited by law or applicable municipal ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with continued encroachment into the waterfront buffer, provided the replacement structure is located farther back from the reference line than the preexisting nonconforming structure.

5. Notwithstanding paragraphs 1 and 4, between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that a deck or open porch extending a maximum of 12 feet towards the reference line may be added to nonconforming structures erected prior to July 1, 1994.

R. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS

Where both the State and the municipality have existing requirements the more stringent shall govern.

S. SAVING CLAUSE

Where any provision of this ordinance is found to be unenforceable it shall be considered savable and shall not be construed to invalidate the remainder of the ordinance.

T. EFFECTIVE DATE

This ordinance shall be effective upon adoption by the municipal governing body.

COMMENTS FOR DISCUSSION RE 100-FOOT SETBACK:

Question: Whether to allow expansion within the protected shoreland by special exception or conditional use permit as opposed to a variance?

- DES allows primary structures to be as close as 50 feet. Antrim, and many other towns, have a 100-foot setback. The purpose, clearly, is to protect the water quality.
- When there is a pristine or sparsely-developed shoreland, this understandable. What is more often the case is shoreland that is already developed, and more than likely the development already violates the setback and the development took place pre-483-B, therefore unlikely that any mitigation measures were followed.
- Is it reasonable to expect people with homes on the water to not improve them? The ordinance requires that they go through a variance process, which is a high bar (and some would say rightly so); the problem is, the criteria do not lend themselves to adequately addressing shoreland issues.
- Several recent ZBA cases have illustrated the difficulty of applying variance criteria to what is essentially a natural resource protection issue. What we have seen is that, through the process of attempting to improve/expand the house, the property owners have been required to have mitigation plans approved by DES; if it were not for these intended improvements, it is unlikely that such mitigation plans would be put in place.
- Thus, the fact that people want to make better use of their properties, requires them to improve stormwater management, buffering of the water's edge, etc. That being the case, perhaps there is value in having a process for approval that is more attuned to actually addressing the specific issues.
- Possible alternative:
 - Allow, by Conditional Use Permit, expansions/additions to existing conforming primary structures that would extend beyond 100 feet but no closer than 50 feet.
 - Allow, by Conditional Use Permit, expansions/additions of a nonconforming structure (by virtue of already being inside the 100 feet), but no closer than 50 feet.
 - Any proposal to extend beyond 50 feet would require a variance.