

Land Use and Development Code Amendment: Building Permit Setback Provisions

**Town of Gorham
Planning Board Meeting
May 3, 2021**

ITEM 2 - Land Use and Development Code – Public Hearing: Proposed amendments regarding setback requirements during permit application process.

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AMENDMENT TRACKING

DESCRIPTION	COMMENTS	STATUS
Town Council Meeting	The Town Council forwards the item to the Planning Board for a public hearing and recommendations. (7 ayes)	February 2, 2021
Planning Board Meeting Discussion	Referred to Board’s Ordinance Committee for review and recommendations	March 1, 2021
Planning Board Ordinance Committee Workshop	The Ordinance committee review the proposed language and forward the item to the PLBD’s next available meeting for a Public Hearing. No changes are being proposed by the Ordinance Committee.	March 22, 2021
Planning Board Meeting Public Hearing		May 3, 2021

The Planning Board refers to staff notes during the review process; however, it shall be noted that staff recommendations are noncommittal and all final decisions are those of the Planning Board and not Town Staff.

Memo completed by Thomas Poirier, Director of Community Development.

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1. Overview

As a reminder the Town Council is looking to address concerns brought forward from the Zoning Board of Appeals regarding a large number of request for variances for new construction built within the required setbacks. These types of variances puts the Zoning Board of Appeals in a tough situation because the new construction within a setback typically cannot met the requirements for a variance to a setback. See the letter from the Zoning Board of Appeals Chairman to the Town Council Chairman on pages 4 and 5.

The last time this item was before the Planning Board it was on for a general discussion and the item as sent to the PLBD Ordinance Committee for review and recommendation. The PLBD Ordinance Committee has reviewed the item and is recommending no changes to the proposed language sent by the Town Council.

This is on for a Public Hearing so the Planning Board will need to open the item to hear any comments on the proposed rezoning.

Proposed Amendment:

CHAPTER 1: ZONING REGULATIONS SECTION 1-3 - ADMINISTRATION E. APPLICATION

- 1) Unless excused by the Code Enforcement Officer, all applications for building permits shall be accompanied by plans drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any, the location and dimensions of the proposed building or alteration and the proposed sewage disposal system as required by the Maine State Plumbing Code certified by a registered land surveyor or registered civil engineer or a plumbing inspector appointed by the Town. The Code Enforcement Officer may require at his discretion additional tests to be performed under his observation and at the expense of the applicant. The application shall include such other information as lawfully may be required by the Code Enforcement Officer to determine conformance with and provide for the enforcement of this Code.
 - a. All newly created lots less than 60,000 sq.ft. of lot area shall be surveyed by a State of Maine Registered Surveyor and all property corners shall be marked with permanent markers, For the purpose of this section a permanent marker shall be one of the following: a granite monument; a concrete monument; an iron pin; or a drill hole in ledge. A stamped copy of the official boundary survey shall be given to the Code Enforcement Officer for the record and part of the building permit review.
 - b. Newly created lots greater than 60,000 sq.ft. may require a survey by a State of Maine Registered Surveyor if the Code Enforcement Officer determines that the proposed structure proximate to a front, side, rear, or shoreland setback warrants concerns about a given setback not meeting the minimum allowed. Should a boundary survey be warranted, all property corners shall be marked with permanent markers, For the purpose of this section a permanent marker shall be one of the following: a granite monument; a concrete monument; an iron pin; or a drill hole in ledge. A stamped copy of the official boundary survey shall be given to the Code Enforcement Officer for the

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record and part of the building permit review.

- c. If any part of the structure is proposed to be located closer than 5 feet to the minimum front, side, rear or shoreland setback required by the applicable zoning district regulations; or if the Code Enforcement Officer determines that special conditions such as complex curves in the property lines, or other unusual features of lot shape or topography, the Code Enforcement Officer may require that the foundation be set and pinned by a professional land surveyor.

PROPOSED MOTION:

Move to recommend adoption of the proposed Zoning Change to Chapter 1, Section 1-3 ADMINISTRATION, E. APPLICATION, 1) a. & b detailing provisions for submission of lot surveys and pinning of foundations by a professional land surveyor as part of the building permit process.

**PLANNING BOARD
ORDINANCE REVIEW COMMITTEE
MARCH 22, 2021
7:00 p.m.**

ZOOM ONLINE WORKSHOP

Committee Members Present

**VINCENT GRASSI, CHAIRMAN
SUSAN DURST
THOMAS HUGHES**

Staff Present

**THOMAS POIRIER, DIRECTOR OF
COMMUNITY DEVELOPMENT
BARBARA SKINNER, CLERK OF THE
BOARD**

AGENDA

Mr. Grassi opened the workshop at 7:00 p.m.

ITEM 2 Proposed Amendment the Land Use and Development Code regarding setback requirements during the permit application process

Mr. Poirier told the Committee that this ordinance amendment originated with the chairman of the Zoning Board of Appeals, because the Board of Appeals has been hearing a number of appeals dealing with setbacks for new house construction where there should be no need for a setback variance. The amendment being proposed gives the Code Enforcement Office the ability during the permitting process to determine if foundations are meeting setback requirements with an official copy of a boundary survey provided.

The Committee agreed that the amendment can be forwarded to the full Planning Board for public hearing.

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September, 18th 2020

Dear Council Chair and Town Manager,

My name is Charlie Haws and I am the chairman of the Gorham Zoning Board of Appeals. I have served on the board in some capacity since June of 2010.

During that time, I believe that possibly half of our cases may have been requests for variances from setback requirements. These requests vary from inches to a few feet, and more. As a result, I have two requests (one regarding new construction and one regarding existing structures).

First.

As you know, the third criterion that must be satisfied to approve a variance is that “The hardship [infraction] is not the result of action taken by the applicant or a prior owner”. In most cases; however, the infraction is caused by the applicant, the applicant’s builder, or a prior owner. The “actions” include failure to measure, mistakes in measurements, mistakes on site plans, and/or a lack of awareness of the applicable setbacks.

Almost all of these cases are innocuous and unintentional, and it does not seem fundamentally fair to deny these requests, and cost the applicant potentially tens of thousands of dollars to remedy the situation, albeit, brought on by themselves.

I would like to suggest that an ordinance be added that might prevent or mitigate these situations. I would propose language such as: “... **all applicants for a building permit will be required to have the foundation pinned by a professional surveyor. This requirement may be waived by the building inspector...**”. Although this will add cost, in many cases the inspector will recognize that the requirement can be waived. In other cases, it may end up saving money in the long run.

Second

As the board discussed the above proposal, it was recognized that the five criteria that must be satisfied to grant a variance (following this letter) may have been intended to be applied to new construction. Many (if not most) of our cases involve existing construction and we frequently find ourselves in difficult positions when trying to adhere to the code, and at the same time be fair to citizens and the town.

It could be that these criteria are common in jurisdictions across the state, but we’d like to ask if there are town resources that could research ways other towns and cities in Maine adjudicate variances and deal with existing non-conforming structures. Again, I’m not sure how to initiate this and direction would be appreciated.

These topics were discussed at our regular August 20, 2020 Board of Appeals Meeting and all members present agreed with the initiation of this inquiry.

Thank you very much,

Charlie Haws
Chairman - Gorham Zoning Board of Appeals

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Criteria:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
2. The granting of a variance will not alter the essential character of the locality.
3. The hardship is not the result of action taken by the applicant or a prior owner.
4. The granting of the variance will not substantially reduce or impair the use of the abutting property.
5. The granting of the variance is based on demonstrated need, not convenience, and no other feasible alternative is available.