

Land Use and Development Code Amendment: Building Permit Setback Provisions

**Town of Gorham
Planning Board Meeting
March 1, 2021**

ITEM 8 - Land Use and Development Code - Discussion: 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		March 1, 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

This is the first time the proposed zoning amendment item has been before the Board for review. The Zoning Board of Appeals has seen 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 3 and 4.

When Community Development staff researched why a building/ structure does not meet a setback, it can be traced to either the new construction proposed for a lot does not have a boundary survey and the builder/ home owner does not understand the dimensions of the lot, or the proposed addition was set too close to a required setback because measurements were made from an inappropriate location. The Town Council is proposing the following amendment to help address these two situations by outlining during the building permit process when a boundary survey is required and when a foundation needs to be set and pinned by a professional land surveyor.

This item can either be forward to one of the Board's sub-committees for review and recommendation, forwarded to a full Planning Board workshop, or forwarded to the next Planning Board meeting for a public hearing.

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

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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 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 MOTIONS:

Move to send the item to the Board's Ordinance Committee or the Board's Comprehensive Plan Implementation Committee for review and recommendations.

Or

Move to send the item to a full Planning Board workshop for review.

Or

Move to send the item to a full Planning Board meeting for a public hearing.

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.

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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

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.