

ARTICLE 13 LEGAL STATUS

Section 13.01 Abrogation and Greater Restrictions - It is not the intent of this ordinance to abrogate, repeal, annul, impair or interfere with any existing easements, covenants, deed restrictions or agreements; or with state statutes, rules, regulations, or permits; or with other local ordinances or regulations. However, in all of the above situations where this ordinance imposes greater restrictions, the provisions of this ordinance shall govern.

Section 13.02 Interpretation - Interpretations of words, phrases, or specific provisions of this ordinance leading to the granting or denial of a necessary permit, the approval or disapproval of any proposal, or any other action or refusal to act by the Code Enforcement Officer, the Planning Board, or the Selectmen of the town may be appealed to the Zoning Board of Appeals within thirty (30) days of the decision by an applicant or aggrieved party, or by any of the elected or appointed municipal officials or employees listed above. The Zoning Board of Appeals interpretation of any word, phrase, or provision of this ordinance called in question shall be final subject only to judicial review. (Amended 4/26/03)

In judicial proceedings arising out of this ordinance and its application by the Town of Waterboro, it is the intent of the Town that the provisions of this ordinance be regarded as minimum requirements and that they be liberally construed in favor of the town so that the purposes and intentions (see Sections 1.02 and 1.03) of the ordinance may be achieved.

All persons interpreting words, phrases, or provisions of this ordinance shall be bound by the definitions set out in Article 14, by the normal and usual meanings of words and phrases in everyday speech and by the meaning to be drawn from the context in which a particular word, phrase, or provision is set. All interpretations must be in harmony with and seek to achieve the overall purpose and intent of the ordinance.

Section 13.03 Severability - If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Section 13.04 Amendment –

(a) Pursuant to the same authorities by which this ordinance is enacted (see section 1.01) the regulations, restrictions, and boundaries established by this ordinance may be changed, supplemented, or repealed. A proposal for such action except repeal of the entire ordinance, (see section 13.05) shall be referred to as a proposed amendment. A proposed amendment under this subsection may be offered by any person who owns land in Waterboro, any resident of the town, the Code Enforcement Officer, the Planning Board, and the Selectmen.

All proposed amendments shall be presented initially to the Selectmen who shall forward them to the Planning Board which shall within thirty (30) days review the proposal and forward a recommendation and the Planning Board's reasoning respecting the proposed amendment to the Selectmen. All proposed amendments shall be forwarded to the Town's Counsel who shall within thirty (30) days review the proposed amendment putting it in proper form and indicating the legal effect of the proposed amendment. If the Town's Counsel indicates that the proposed

amendment is legally impermissible the Selectmen shall notify the author of the proposed amendment of that fact and no further action respecting that proposed amendment need be taken. In all other cases the Selectmen shall within forty-five (45) days of initial receipt of a proposed amendment schedule a public hearing thereon giving at least seven (7) days general notice by publication to the date, time and place of such hearing and the complete text of the proposed amendment.

The Selectmen and all of the above individuals shall be deemed parties to the zoning amendment proceeding as well as any member of the public present at the public hearing who is recognized and participates by offering testimony with respect to the proposed amendment.

At hearings held on a proposed amendment to this Ordinance, all persons present must be given a full opportunity to be heard. The authors of the proposed amendment should explain and present the rationale of their proposal at the outset. The review, recommendation, and comments of the Planning Board, the Town's Counsel, and the Selectmen should then be presented. A question and answer period, if necessary, should follow. The comments of aggrieved persons should then be received.

After a public hearing the Board of Selectmen shall vote on the proposed amendment. The decision to make any amendment to the Zoning Ordinance, including conditional or contract rezoning, shall be wholly within the discretion of the Selectmen who may, at their option, decline, amend or adopt said proposal. Any amendment approved hereunder shall become effective as set forth in the Town Charter.

(b) Pursuant to 30-A M.R.S.A. § 4352(8), conditional or contract zoning is hereby authorized for development where, for reasons such as the unusual nature or unique location of the development proposed, the Board of Selectmen finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions not generally applicable to other properties similarly zoned; it should not be used to circumvent enforcement decisions of the Code Enforcement Officer or decisions of the Zoning Board of Appeals. All contract or conditional zoning under this section shall establish rezoned areas which are compatible with the existing and permitted uses within the original zones. Nothing in this section shall authorize a rezoning, or an agreement to change or retain a zone, which is inconsistent with the Town's Comprehensive Plan. A conditional or contract rezoning may be requested by the owner of the property for which the rezoning is sought or by someone who has a legal interest in the property.

All conditions and restrictions imposed shall relate only to the physical development and/or operation of the property and may include, by way of example:

- a). Limitations on the number and types of uses permitted;
- b). Restrictions on the scale and density of the development;
- c). Specifications for the design and layout of the buildings, structures, and other improvements;

- d). Schedules for commencement and completion of construction, including anticipated schedules (i.e. beginning and completion dates) for all construction phases;
- e). Performance guarantees securing completion and/or maintenance of public and private improvements, and guarantees against defects;
- f). Preservation and enhancement of open spaces and buffers, and protection of natural areas and historic sites, including establishment of park land and conservation easements;
- g). Contributions toward the provisions of municipal services required by the development;
- h). Construction or enhancement of certain public capital improvements impacted by the development;
- i). Provisions for enforcement and remedies for breach of any condition or restriction; and,
- j). Provisions regulating the assignability of said contract, including fees relating to the same.

A person wishing to propose contract zoning under this Section may, prior to filing an application, submit a conceptual sketch plan to the Planning Board together with a sketch plan review fee in such amount as the Board of Selectmen may from time to time establish by order. Such sketch plan review will not be binding on the applicant or the Planning Board, but is intended to permit informal evaluation of the proposed rezoning before formal application. The sketch plan review fee is non-refundable.

Any proposal to amend the official zoning map of the Town through the establishment of a conditional or contract rezoning shall be accompanied by a non-refundable fee in such amount(s) and for such purpose(s) as the Board of Selectmen may from time to time establish by order, which shall be paid at the time the request is filed with the Planning Board. Where an application seeks a contract rezoning, the applicant shall include draft contract language with its application. Such contract shall include, at a minimum, the proposed conditions of the rezoning, enforcement provisions and a map of the area for which the rezoning is requested.

To help recover costs incurred by the Town in the review, administration, site inspection, and public notice associated with the conditional or contract rezoning application, the following fees and deposit in such amount(s) and for such purpose(s) as the Board of Selectmen may from time to time establish by order shall be paid by the applicant to the Town at the time of filing the application for conditional or contract rezoning:

- (a) Publishing and public notice fee;

- (b) Review fee; and
- (c) Independent consulting and peer review escrow account.
- (d) Reimbursement of fees for professional services incurred by the Town for advice and negotiations relating to said conditional or contract rezoning.

The Planning Board shall conduct a public hearing prior to any property being rezoned under this Section. Notice of this hearing shall be posted in the Town Clerk's office at least thirteen (13) days prior to each public hearing and shall be published in a newspaper of general circulation within the Town at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing.

Notice shall also be sent to the owner or owners of the property to be rezoned and to the owners of all property abutting the property to be rezoned at their last-known addresses as established by the Town's assessment records. Notice must also be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

At the end of the public hearing, the Planning Board shall vote whether to recommend the conditional or contract rezoning application to the Board of Selectmen. The vote of the Planning Board shall be forwarded to the Board of Selectmen for consideration with the application for conditional or contract rezoning.

No conditional or contract rezoning shall exempt the applicant from subsequent Site Plan review and/or Subdivision review by the Planning Board of the proposed development.
(Amended 4-21-2007)

Section 13.05 Repeal - The repeal of any article, section, subsection, or provision of this ordinance may be accomplished pursuant to the amendment procedures set out in Section 13.04.

The repeal of the entire ordinance (which shall hereafter be referred to simply as repeal) whether sought by the Selectmen or by citizens utilizing the provisions of MRS.A tit. 30 s2061 (4), may be accomplished only after a public hearing on the question of repeal and an affirmative vote to repeal this ordinance in accordance with the procedures outlined in Section 13.06. The hearing shall be scheduled by the Selectmen no more than thirty (30) days before the vote on the question of repeal is taken. Notice of such hearing setting forth the date, time, place, and purpose of the hearing shall be mailed by the Selectmen to all residents of the town and to all property owners of record. At such hearing those favoring repeal of this ordinance should explain the rationale of their proposal at the outset. The comments and recommendations of the Code Enforcement Officer, Planning Board, Conservation Commission, and Selectmen of the question of repeal should then be heard. The legal consequences of repeal should be explained by the Town's Counsel. A question and answer period, if necessary, should follow. Finally, the comments of any member of the public on the question of repeal should be heard.

After a public hearing on the question of repeal, a vote on the proposal to repeal this ordinance shall be taken within thirty (30) days either at the regular annual meeting, at a special town meeting held for the purpose of voting on a proposal to repeal this ordinance, or by preparing a separate article to be placed on the municipal ballot as provided by MRSA tit. 30 s2061 (4). See Section 13.06 for the effective date of a vote to repeal.

Section 13.06 Effective Date - This ordinance shall be in full force and have legal effect in the Town of Waterboro as of March 13, 1977. Amendments shall be in full force and have legal effect in the town as of the day following the date of their enactment. This ordinance and amendments thereto shall be deemed enacted at the time a majority of those present and voting cast affirmative votes at an annual or special town meeting, or when a majority of the valid ballots of the ordinance or amendment and in accordance with the rules of the meeting or election procedures being utilized (see MRSA tit. 30 ss2051-2067.)

This ordinance and amendments thereto may be repealed by similar voting procedures as those outlined for enactment, except of course, that those voting in the affirmative shall be voting in favor of repeal. However, the effective date of a successful vote to repeal this ordinance shall be sixty (60) days after the date on which the repeal vote was taken to allow the municipal officers sufficient time to take whatever steps are necessary to protect the public interest in light of the repeal of this ordinance.

Section 13.07 Hearings - In addition to the hearing requirements outlined in Sections 10.05, 13.04, and 13.05 the Code Enforcement Officer, Planning Board, or Selectmen may at any time conduct public hearings to receive testimony and gather information which will facilitate the discharge of any duty or responsibility imposed by this ordinance. Notice of any such hearings must set forth the date, time, place, and purpose of the hearing date to both the general public by publication and those who have a special interest in the particular issue being heard. The latter shall receive notice by mail and include those persons whose acts or failures to act give rise to the hearing, the municipal officials or employees listed above, and any person whose property is likely to be affected by issues raised at such a hearing and decisions subsequently made with respect to those issues.

At hearings held pursuant to this section, a dated record should be kept of those present, the issues raised, the substance of testimony given, and actions (if any) taken. A summary of the facts, reasoning and rationale which underlies any action taken should also be set forth.

All hearings held pursuant to this section, as well as subsequent meetings of the respective officials or bodies listed above which are held to resolve issues raised at a hearing, shall be open to all members of the public.

Section 13.08 Judicial Review - In addition to the judicial review from Zoning Board of Appeals decisions provided in section 10.08 any person aggrieved by any provision of this ordinance interpretation of this ordinance, act or failure to act of the Code Enforcement Officer, Planning Board, or Selectmen undertaken in the course of administering pursuant to the Maine Rules of Civil Procedure (MRSA) tit. 14 as amended). Such an action must be brought within

thirty (30) days after the enactment of this ordinance, the enactment of amendments to this ordinance, or any final interpretation of provisions of this ordinance, order, action, or refusal to act of elected or appointed municipal officials or employees.

However, no action may be brought under this provision until appeal procedures before the Zoning Board of Appeals provided by this ordinance have been exhausted by the aggrieved person (see Article 10).