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MEMO

DATE: May 7, 2021

TO: Windham Town Council
THROUGH: Barry Tibbetts, Town Manager
FROM: Amanda Lessard, Planning Director
Cc: Gretchen Anderson, Environmental & Sustainability Coordinator
Chris Hanson, Director of Code Enforcement
Natural Resources Advisory Committee

RE: Proposed changes to the Shoreland Zoning Map

The Natural Resources Advisory Committee presented recommended changes to the Shoreland Zoning Ordinance and Town of Windham Land Use Map at the Council meeting on April 13, 2021. The memo dated April 6, 2021 from Environmental & Sustainability Coordinator Gretchen Anderson quantified the number of properties that would be rezoned. Staff offers the additional information below to expand on the impacts of the proposed map changes to the Limited Residential (LR), Resource Protection (RP), and Stream Protection (SP) districts.

The map changes fall into two categories:

1. Required. These changes will bring the Town into compliance with the Maine Department of Environmental Protection minimum shoreland zoning requirements.
 - a. Added 10-acre freshwater wetlands to LR (250 ft)
 - i. 85 properties with 46 buildings¹ would be rezoned
 - ii. Setback from wetland is 75 feet
 - iii. Rezoned buildings within 75 ft would be non-conforming and could expand 30%
 - iv. New residential one and two family uses and structures are allowed within 75-250 ft but must comply with vegetation clearing standards
 - b. Added Inland Waterfowl / Wading bird Habitat (IWWH) to RP (250 ft) at Albion Road
 - i. 20 properties with 6 buildings¹ would be rezoned
 - ii. Rezoned buildings would be non-conforming and could expand 30%
 - iii. Any vacant property entirely rezoned could permit a single-family home as a special exception with Planning Board approval
2. Optional. These changes are more restrictive than the state's minimum guidelines.
 - a. Pleasant River north of Route 302 expanded to 250 ft RP from 100 ft RP or 100 ft SP

¹ Based on GIS Department 2018 Building Footprint data, which includes principal and accessory buildings.

- i. Zoning will be consistent with the Pleasant River downstream from Route 302 to the Presumpscot River
- ii. 65 properties with 37 buildings¹ would be rezoned
- iii. Setback from river is 250 feet or 75 feet for structures that are specifically allowed in RP
- iv. Rezoned buildings would be non-conforming and could expand 30%
- v. Any vacant property entirely rezoned could permit a single-family home as a special exception with Planning Board approval
- b. Expanded 100 ft SP to all tributaries of waterbodies located in Windham
 - i. 501 properties with 53 buildings¹ would be rezoned
 - ii. Setback from stream is 75 feet
 - iii. DEP already requires a 75 ft setback to streams in accordance with the Natural Resources Protection Act
 - iv. Rezoned buildings within 75 ft would be non-conforming and could expand 30%
 - v. New residential one and two family uses and structures are allowed within 75-100 ft but must comply with vegetation clearing standards

The table of uses permitted in each shoreland zoning district is attached for reference (Shoreland Zoning Ordinance pgs 18-19).

Zoning Amendment Process

The Planning Board must hold a public hearing prior to making a recommendation on this item to the Town Council. Staff would notify all impacted properties owners of the Planning Board public hearing. The Town Council will need to vote on the proposed changes to the Shoreland Zoning Ordinance and Map for the changes to be officially approved. The approved changes then will not be effective unless approved by the DEP Commissioner.

TABLE 1. LAND USES IN THE SHORELAND ZONE

<u>LAND USES</u>		<u>DISTRICTS</u>			
		<u>SP</u>	<u>RP</u>	<u>LR</u>	<u>GD</u>
1.	Non-intensive recreational uses not requiring structures such as hunting fishing and hiking	YES	YES	YES	YES
2.	Motorized vehicular traffic on existing roads and trails	YES	YES	YES	YES
3.					
4.					
5.	Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO ¹	YES	YES
6.	Fire prevention activities	YES	YES	YES	YES
7.	Wildlife management practices	YES	YES	YES	YES
8.	Soil and water conservation practices	YES	YES	YES	YES
9.	Mineral exploration	NO	YES ²	YES ²	YES ₂
10.	Mineral extraction including sand and gravel extraction	NO	PB ³	PB	PB
11.	Surveying and resource analyses	YES	YES	YES	YES
12.	Emergency operations	YES	YES	YES	YES
13.	Agriculture	YES	PB	YES	YES
14.	Aquaculture	PB	PB	PB	YES
15.	Principal structures and uses				
	A. One and two family residential, including driveways	CEO	PB ⁹	CEO	CEO
	B. Multi-unit residential	NO	NO	PB	PB
	C. Commercial	NO	NO	PB	PB
	D. Industrial	NO	NO	NO	PB
	E. Governmental and Institutional	NO	NO	PB	PB ⁸
	F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	PB ⁴	PB	CEO	CEO
16.	Structures accessory to allowed uses	CEO	CEO	CEO	CEO
17.	Permanent piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland	PB	PB	PB	PB
18.	Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI
19.	Home occupations	CEO	CEO	CEO	CEO
20.	Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI
21.	Essential services	PB ⁵	PB ⁵	PB	PB
	A. Roadside distribution lines (34.5k V and lower)	CEO ⁵	CEO ⁵	YES ¹¹	YES ¹¹
	B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone.	CEO ⁵	CEO ⁵	CEO	CEO
	C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone.	PB ⁵	PB ⁵	PB	PB
22.	Service drops, as defined, to allowed uses	YES	YES	YES	YES
23.	Public and private recreational areas involving minimal structural development	PB	PB	PB	PB
24.	Individual, private campsites	CEO	CEO	CEO	CEO
25.	Campgrounds	NO	NO ⁶	PB	PB
26.	Road and driveway construction	CEO	PB ⁷	CEO	CEO
27.	Medical marijuana registered caregiver / Medical marijuana registered caregiver (home occupation)	NO	NO	NO	CEO
28.	Other marijuana businesses	NO	NO	NO	NO
29.	Parking facilities	NO	PB	PB	PB
29.	Marinas	PB	NO	PB	PB
30.	Filling and earth moving of less than 10 (ten) cubic yards	CEO	CEO	YES	YES
31.	Filling and earth moving of more than 10 (ten) cubic yards	CEO	PB	CEO	CEO

32.	Signs	CEO	CEO	CEO	CEO
33.	Uses similar to allowed uses	CEO	CEO	CEO	CEO
34.	Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
35.	Uses similar to uses requiring a PB permit	PB	PB	PB	PB
36.	Wireless Telecommunications Facilities 3/28/00	NO	NO	NO	PB

¹ In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

² Requires permit from the CEO if more than 100 square feet of surface area, in total, is disturbed.

³ In RP not permitted in areas so designated because of wildlife value.

⁴ Provided that a variance from the setback requirements is obtained from the Board of Appeals.

⁵ See further restrictions in Section 15 L.

⁶ Except when area is zoned for RP due to flood plain criteria in which case a permit is required from the PB

⁷ Except as provided in Section 199-15(H)(4).

⁸ Correction Facilities are a Special Exception in the General Development (GD) District requiring both Planning Board and Zoning Board of Appeals approval. Correction Facilities must meet the Performance Standards listed under Article V, § 140-31 of the Land Use Ordinance.

⁹ Single family residential structures may be allowed by special exception only according to the provisions of Section 16(G), Special Exceptions. Two-family residential structures prohibited.

¹⁰ Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

¹¹ Permit not required, but must file a written “notice of intent to construct” with CEO.

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A., section 480-C, if the activity occurs in, on, over or adjacent to any freshwater wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.