

## **Land Use Permit Ordinance Town of Whiting**

Enacted: March 18, 1991; Amended March 25, 2002, March 27, 2006, and March 27, 2023.

### **1. AUTHORITY**

This Ordinance is enacted pursuant to the Town of Whiting's home rule authority under Art. VIII, Part Second of the Maine Constitution and 30-A M.R.S. § 3001.

### **2. PURPOSE**

The purpose of this Ordinance is to provide for the health, safety and welfare of the public through the regulation of the construction, relocation, replacement, and alteration of buildings, as well as the use of property for specific purposes, within the Town of Whiting.

### **3. APPLICABILITY; PERMIT REQUIRED**

No person or entity may: (a) construct, expand, change, add, demolish, relocate, or replace a structure, or begin, resume, (b) change the use of any property, or (c) convert a seasonal dwelling into a year-round dwelling, within the Town of Whiting, without first obtaining a land use permit from the Planning Board.

Notwithstanding the foregoing, and for the avoidance of doubt, no permit is required for the construction, alternation, relocation, replacement, or demolition of a structure up to 100 square feet in total floor area.

### **4. ADMINISTRATION**

#### **4.1 Enforcement:**

This Ordinance shall be enforced by the Code Enforcement Officer.

#### **4.2 Administrator:**

Permits required under this Ordinance shall be issued by the Planning Board.

#### **4.3 Inspection:**

The Code Enforcement Officer shall inspect any structure or use permitted under this Ordinance in order to ensure compliance with this Ordinance, as well as all applicable provisions of State law.

#### **4.4 Right of Entry:**

Pursuant to 30-A M.R.S. § 4452(1), as may be amended from time to time, the Code

Enforcement Officer may enter any property at reasonable hours, or enter any structure with the consent of the owner, occupant, or agent, to inspect the property or structure for compliance with this Ordinance.

## **5. DEFINITIONS**

The following definitions shall apply to terms used in this Ordinance. All terms not defined in this Ordinance shall be given their customary and usual meanings.

5.1. Building: a “structure” as defined in this Ordinance.

5.2 Individual Private Campsite: an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include, among other things, a gravel pad, parking area, fire place, or tent platform.

5.3 Recreational Vehicle: a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the recreational vehicle must remain with its tires on the ground and must be registered with the Maine Bureau of Motor Vehicles.

5.4 Structure: anything temporarily or permanently located, built, constructed, or erected for the support, shelter, or enclosure of persons, animals, goods, or property of any kind, or anything constructed or erected on or in the ground. The term “structure” includes those temporarily or permanently located, such as decks, patios, solar energy systems, solar arrays, and commercial satellite dishes. The term “structure” does not include fences, poles, and wiring of other aerial equipment normally associated with service drops, including guy wires and guy anchors, subsurface waste water disposal systems, as defined in 30-A M.R.S. § 4201(5), as may be amended from time to time, or wells or water wells, as defined in 32 M.R.S. § 4700-E(8), as may be amended from time to time.

## **6. APPLICATION; PROCEDURE**

6.1 Application:

Every application for a land use permit shall be submitted in writing in such form as approved by the Select Board and available through the Town Office. Additional information may be required by the Planning Board or Code Enforcement Officer in accordance with State and local ordinances and laws. An application will not be accepted for consideration until all necessary information required by the Planning Board and/or Code Enforcement Officer is provided. Notice of such determination and information required shall be made in writing. The applicant shall have up to 30 days from the date the Planning Board determines that the application is incomplete to provide all additional information required. Otherwise, the application will be deemed to have been withdrawn.

## 6.2 Approval or Denial:

Once an application is accepted for consideration, the Planning Board shall render a decision in writing within 60 days. Any denial will state the reasons for denial.

## 6.3 Life of Permit:

Construction of any structure permitted under this Ordinance, and the beginning or resumption of any use of property permitted under this Ordinance, shall begin within one year of the date of the permit approval. Thereafter, the permit is void. The land use permit shall be displayed on the premises clearly visible to the Code Enforcement Officer.

## 6.4 Fees.

An application fee shall accompany each application for a land use permit and a land use permit fee shall be paid before a land use permit is issued by the Planning Board. The amount of both fees shall be commensurate with the costs of administering this Ordinance, and shall be set in the discretion of the Select Board, upon the advice of the Planning Board.

Notwithstanding the foregoing, if a property owner is seeking a new permit, or an amendment to an existing permit, following the issuance of a notice of violation of this Ordinance by the Code Enforcement Officer, both the application and land use permit fee shall be double the standard fees set by the Select Board.

# 7. PERFORMANCE STANDARDS

In order to be granted a land use permit, the applicant shall prove that the proposed structure or land use is in compliance with the performance standards of this Ordinance, which shall be the minimum requirements for approval of the permit.

## 7.1 Pollution:

- a. The proposal will not result in undue water pollution.
- b. The proposal will not result in undue air pollution.
- c. The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water.
- d. The proposal will not result in undue noise pollution. If it is likely that the proposal will result in noise in excess of that which is normal for the area, it shall be designed and landscaped to minimize noise interference with neighboring uses. Unreasonable noise at unreasonable hours shall be required to be muffled so as not to be objectionable beyond the property lines due to intermittence, beat, frequency, shrillness or volume. The following uses and activities shall be exempt from the noise level regulations:
  1. noises created by construction and temporary maintenance activities between 6:30 a.m. and 8:00 p.m.
  2. the noises of safety signals, warning devices, and emergency activity,

3. traffic noise on public roads or railroads,
4. uses existing before enactment of this Ordinance.

#### 7.2 Exterior lighting:

There will be no flashing lights or strong light shining beyond the lot lines of the subject property onto neighboring properties, or onto any town way so as to impair the vision of the driver of any vehicle upon that town way.

#### 7.3 Setback and height:

No structure shall be allowed within 10 feet of any property line of the subject property or within 25 feet of any public way, nor shall any structure exceed 30 feet in height as measured from the existing grade.

#### 7.4 Individual Private Campsites:

Individual private campsites not associated with campgrounds are allowed, provided the below conditions are met. For the avoidance of doubt, these provisions apply only to individual private campsites located on properties that are wholly outside of the Shoreland Zoning District, as defined in the Town of Whiting Shoreland Zoning Ordinance. Individual private campsites within the Shoreland Zoning District are reviewed and approved pursuant to Section 15(E) of the Shoreland Zoning Ordinance.

- a. One campsite per lot existing on the effective date of this Ordinance.
- b. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- c. Individual private campsites must be set back at least ten (10) feet from all property lines and from all public or private ways.
- d. All individual private campsites shall be located on lots with at least 33,000 square feet of total area.
- e. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector or their designee. Where disposal is off-site, written authorization from the receiving facility or property owner is required.
- f. When a recreational vehicle, tent, or similar shelter is placed on-site for more than one hundred twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface wastewater disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules, unless served by public sewage facilities.

### 7.5 Shoreland Zoning:

Applications concerning properties located within the Shoreland Zoning District, those being properties located, in whole or in part, within 250 feet, horizontal distance, of the normal high water line of any pond, lake, river or tidal waters are also subject to all performance standards set forth in the Town of Whiting Shoreland Zoning Ordinance, as may be amended from time to time.

### 7.6 Conversion of Seasonal Dwelling to Year-Round Dwelling.

No seasonal dwelling, *i.e.*, a dwelling not insulated or sufficiently winterized for year-round use, may be converted into a year-round dwelling unless the property owner submits: (a) a soil study that sufficiently demonstrates that the subject property is suitable for such year-round occupation, and (b) either a site evaluation prepared by a site evaluator licensed in the State of Maine, that demonstrates that the existing septic system is sufficiently designed and installed for year-round use, or a design for a new septic system designed by a site evaluator licensed in the State of Maine that complies with the State of Maine's Subsurface Wastewater rules.

## **8. AMENDMENTS AND OTHER LEGAL PROVISIONS.**

8.1. Amendment. This Ordinance or any part thereof may be amended by a majority of legal voters present and voting at a duly called town meeting.

8.2 Conflict. Whenever the provisions of this Ordinance conflict with the provisions of any other ordinance of the Town of Whiting, the stricter provisions shall apply.

8.3 Severability. If any portion of this Ordinance is held to be invalid by a court of competent jurisdiction, all other portions of this Ordinance shall remain in full force and effect.

## **9. VIOLATIONS; ENFORCEMENT**

9.1. Enforcement. When any violation of any provision of this Ordinance is found to exist, the Code Enforcement Officer shall issue a notice of violation directing the property owner and/or the violator to correct the violation within thirty (30) days of receipt. If left uncorrected, the Select Board, upon notice from the Code Enforcement Officer, may institute any and all actions and proceedings, either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of this Ordinance. Such actions shall be brought in the name of the Town of Whiting.

9.2. Fines and Penalties. Any person or entity, being the owner, contractor, or other entity having control or use of any structure or premises, who violates any provision or requirement of this Ordinance may be subject to a civil penalty as outlined in 30-A M.R.S. § 4452. Each day that a violation is found to be in existence shall be considered a separate violation. In the event that the Town is the prevailing party in enforcement litigation initiated in court, the Town shall be entitled to reimbursement of the costs of bringing such a case, including the Town's reasonable attorney's fees.

**10. APPEAL**

Appeals of decisions by the Planning Board under this Ordinance shall be taken to the Town of Whiting Board of Appeals within thirty (30) days of the date of that decision.