

**WABANA TOWNSHIP ORDINANCE NO. 101
REGULATING SUBDIVISIONS IN THE
SHORELAND OVERLAY DISTRICT**

The Board of Supervisors of the Town of Wabana ordains:

Article I - Purpose

This ordinance, together with the Itasca County ordinances that are not less restrictive than this ordinance, regulates the subdivision and development of land and communication towers within the Shoreland Overlay District within Wabana Township. The official controls of Itasca County regarding the regulation and control of subdivisions and developments within Itasca County shall apply to the matters regulated that are not specifically covered by this ordinance.

Article II - Creation of Shoreland Overlay District

The Shoreland Overlay District is hereby created within Wabana Township consistent with the Itasca County Comprehensive Land Use Plan adopted May 23, 2000, and the rules and regulations of the Department of Natural Resources, and is defined to be all land located in and from the shoreline of any lake within Wabana Township to 1,000 feet from the ordinary high water level of such lake, including RD1, RD2, Natural Environment 1, Natural Environment 2, and Natural Environment 3, and all land located within an area 300 feet from the ordinary high water level of a river or stream located in Wabana Township. This district includes that portion of lakes and/or rivers within Wabana Township and adjacent townships as to that portion of the lake and/or river within Wabana Township.

Article III - Authority

This ordinance has been adopted pursuant to the authority granted townships under Minn. Stat. §§ 394.33, 366.10, and 366.13, and all other applicable statutes, and in conformity therewith.

Article IV - Regulations

Section 1 - Subdivision/Development: No subdivision of land within the Shoreland Overlay District shall be allowed, unless each or the following minimum lot area width and setback requirements are met for the applicable lake or river:

a. **Minimum lot area, width, and setbacks:** The following tables contain the minimum lot area, lot width, and setback standards for residential development in shoreland districts. The minimum side yard setbacks for dwellings shall be fifteen feet from the nearest lot lines. The minimum rear yard setback for dwellings shall be thirty feet from the nearest lot lines. The minimum side and rear yard setbacks for structures housing livestock shall be one hundred feet from the nearest lot lines.

A. Natural Environment 1

Riparian Lots						Nonriparian Lots	
	Area (Sq. ft.)	Width	Structure Setback	Sealed Septic Tank Setback	Sanitation Setback (Sewer Treatment Field)	Area (sq. ft.)	Width
Dwelling Unit	87,120	200'	200'	100'	150'	108,900	200'

B. Natural Environment 2

Riparian Lots						Nonriparian Lots	
	Area (Sq. ft.)	Width	Structure Setback	Sealed Septic Tank Setback	Sanitation Setback	Area (sq. ft.)	Width
Dwelling Unit	108,900	300'	100'	100'	150'	130,680	300'

C. Natural Environment 3

Riparian Lots						Nonriparian Lots	
	Area (Sq. ft.)	Width	Structure Setback	Sealed Septic Tank Setback	Sanitation Setback	Area (sq. ft.)	Width
Dwelling Unit	130,680	300'	100'	100'	150'	152,460	300'

D. Recreational Development 1

Riparian Lots					Nonriparian Lots	
	Area (Sq. ft.)	Width	Structure Setback	Sanitation Setback	Area (sq. ft.)	Width
Dwelling Unit	87,120	200'	100'	75'	108,900	200'

E. Recreational Development 2

Riparian Lots					Nonriparian Lots	
	Area (Sq. ft.)	Width	Structure Setback	Sanitation Setback	Area (sq. ft.)	Width
Dwelling Unit	65,340	200'	100'	75'	87,120	200'

F. Rivers

	Width	Structure Setback	Sanitation Setback
Dwelling Unit	300'	200'	150'

b. **Allowed structures:** Only one single family detached dwelling shall be allowed on any lot within the Shoreland Overlay District, either riparian or nonriparian. Additional outbuildings (nondwelling structures) shall be allowed on lots, provided the total combined square footage of all structures, including the proposed outbuildings, single family dwelling, and other impervious surfaces on the lot, does not exceed 25 percent of the total square footage of the lot. The exterior perimeter of each structure (footprint) shall be used to determine the square footages under this section, to be determined by a survey provided by the lot owner when applying for zoning permits, subdivision, or PUD approval.

c. **Restriction on lake access:** Only riparian lots shall have lake access. No nonriparian lots shall have direct or indirect lake access in any form or manner, whether deeded or private easement, license, road (whether public or private), trails, or otherwise. No subdivision plans or plats, including planned unit developments, shall be approved for recording or filing by the Itasca County Recorder or Registrar of Deeds if they do not meet these requirements. All instruments that convey real estate shall be submitted to the Itasca County Recorder and an administrative officer for review for a determination or compliance with this ordinance, pursuant to Minn. Stat. § 394.37. All such Instruments must be stamped “approved for recording by the Town or Wabana by the Town Zoning Commissioner,” if the instrument creates a subdivision, plat, or planned unit development. Further, no zoning permits by the Wabana Town Zoning Commissioner shall be issued for structures to be constructed on and within the Shoreland Overlay District, unless each of these requirements are met, together with all other applicable laws. These restrictions on lake access apply only to the lots in the Shoreland Overlay District and do not affect the rights or property owners from their lawful use of public roads, public accesses. or any other public rights.

d. **Board of Appeals and Adjustment:**

A. Established. The Town Board shall serve as the Wabana Board of

Appeals and Adjustments.

- B. Rules and Procedures. The Board of Appeals and Adjustments may adopt rules and procedures related to how it conducts its meetings and hearings, provided such rules and procedures are consistent with the provisions of this ordinance and applicable laws.
- C. Meetings and Hearings. The Board of Appeals and Adjustments shall hold such meetings and hearings as needed to conduct its duties. Meetings of the Board of Appeals and Adjustments may be held as part of a regular or special meeting of the Town Board.
- D. Powers and Duties. The Board of Appeals and Adjustments shall have the following powers and duties:
 - (1) Appeals. Hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by the Town Zoning Commissioner in the enforcement of this ordinance.
 - (2) Variances. Hear and decide requests for variances from the literal provisions of the ordinance in instances where their strict enforcement of such provisions would cause practical difficulties because of circumstances unique to the individual property under consideration, and may grant such variance only when it is demonstrated that such actions will be in keeping with the purpose and intent of the ordinance. The Board of Appeals and Adjustments may impose conditions in the granting of variances to ensure compliance and to protect adjacent properties.

e. **Variances:** No variances shall be granted by Wabana Township except in conformance with this Section.

- A. Authority. The Board of Appeals and Adjustments may grant a variance from the provisions of this ordinance in order to promote the effective and reasonable application and enforcement of this ordinance. A variance is a modification or variation of the provisions of this ordinance as applied to a specific property. The Board of Appeals and Adjustments may not grant a variance for any use that is not allowed by this Ordinance for property in the zoning district in which the property is located.
- B. Application. Application for a variance shall be made by the property owner, or its authorized agent, on the Town's application form, signed by the owner, be accompanied by the required application fee and escrow (if required), and must, at a minimum, contain all of the following information:

- (1) The name and mailing address of all property owners of record, according to the county auditor's property tax records, within one-quarter mile of the property to which the application relates;
- (2) The name of the applicant and of all owners of the property to which the application relates;
- (3) A description of the proposed use or structure to which the variance relates; and
- (4) An explanation of the specific conditions and circumstances that give rise to the practical difficulties in strictly complying with the provisions of this ordinance, the specific provisions of this ordinance from which a variance is being sought, and the extent of the requested deviation from the standards.

- C. **Application Review.** An application for a variance must be submitted to the Town Zoning Commissioner. The Zoning Commissioner shall review the application to determine if it contains all the required information and is otherwise complete, including payment of the required fees. If an application is not complete, the Zoning Commissioner shall provide the applicant written notice of what information is needed in order to make the application complete within fifteen (15) business days of the Town's receipt of the application. The Zoning Commissioner shall forward complete applications to the Planning Commission to conduct a hearing.
- D. **Inspection.** The Town may conduct one or more site investigations of the property as part of processing a variance application. If a quorum or more of the Planning Commission or the Board of Appeals and Adjustments conducts a site investigation, notice shall be posted at the Town's posting places at least three (3) days before the date of the inspection unless the inspection is being conducted as part of the hearing. The Town may also conduct one or more site investigations after a variance has been issued to review an alleged or potential violation of the conditions of the variance or of this ordinance. Submission of an application, and acceptance of a variance, constitutes consent on the part of the owners of the property to the conditions imposed on the variance and to allow the Town to conduct inspections of the property at reasonable times to determine eligibility to receive a variance and then related to the administration and enforcement of the variance.
- E. **Hearing.** The Planning Commission shall conduct a public hearing on the variance application. At least ten (10) days' published and posted notice shall be provided of the public hearing. The owner, or its authorized agent, is expected to attend the hearing to explain the application and to answer

the Planning Commission's questions. The hearing may be continued from time to time. In reviewing the variance request and developing its recommendation, the Planning Commission shall consider the criteria set out in this section and such other factors as it determines are appropriate to evaluate the proposed use. It is the owner's burden to demonstrate it is eligible to receive the requested variance. If the Planning Commission recommends approval of the variance, its recommendation shall include any conditions it determines are appropriate and reasonable to address anticipated impacts of the proposed use in order to protect the public health, safety, and welfare. The Planning Commission shall forward its recommendation, together with its supporting findings, to the Board of Appeals and Adjustments.

- F. Board of Appeals and Adjustments. The Board of Appeals and Adjustments shall make the final decision regarding the requested variance and it shall not issue a variance unless it determines the request satisfies the criteria set out in this section. The Board of Appeals and Adjustments may impose such conditions on the variances it issues as it determines are reasonable. All such conditions must be directly related to and bear at least a rough proportionality to the impact the Board of Appeals and Adjustments determines will be created by the variance.

- G. Criteria. The owner has the burden of demonstrating that sufficient practical difficulties exist, based on the following criteria, with respect to its property to justify the issuance of a variance. The following criteria shall be considered in determining whether to issue a variance:
 - (1) The variance is in harmony with the general purposes and intent of this ordinance;
 - (2) The variance is consistent with the comprehensive plan;
 - (3) The owner proposes to use the property in a reasonable manner not permitted by this ordinance;
 - (4) The plight of the owner is due to circumstances unique to the property that were not created by the owner;
 - (5) If granted, the variance will not alter the essential character of the locality; and
 - (6) Economic considerations are not the sole basis for the requested variance.

- H. Scope and Filing. A variance issued by the Town is limited to the particular property and the specific deviation allowed by the variance. The granting of a variance does not bind the Town to approving similar variances for other properties or additional variances, permits, or permissions for the same property. A certified copy of the variance shall be filed, at the owner's expense, with the Itasca County Recorder. It shall include the legal description of the property to which it relates.

- I. Expiration and Revocation: A variance shall expire and become void if the use or structure to which it relates is not substantially started within twelve (12) months from its date of issuance. A substantial start means more than preliminary steps have been taken such that preparations to initiate the use are mostly complete. The Board of Appeals and Adjustments may revoke a variance if it determines, after notice to the owner and conducting a public hearing, that any of conditions imposed on the variance have been violated.

Article V – Application

This ordinance shall apply to all future subdivisions and developments in Wabana Township on lands lying within the Shoreland Overlay District proposed after the effective date of this ordinance, regardless of the less restrictive restrictions in the current Itasca County ordinances or future ordinances and regardless of amendments to the Comprehensive Plan, if any.

This ordinance shall not affect subdivisions, lots sizes, structures, existing developments, or businesses that were lawful under prior ordinances and law and shall apply only prospectively from the effective date of this ordinance.

Article VI - Enforcement

Section 1 - Civil Enforcement. The Board of Supervisors of Wabana Township shall continue to monitor subdivisions, developments, and construction of structures within Wabana Township, including those lying within the Shoreland Overlay District. All building structures within the Wabana Township Shoreland Overlay District shall require zoning permits signed and approved by a duly designated agent for Wabana Township, to be appointed by the Board of Supervisors as a Town Zoning Commissioner. The Township may charge a reasonable fee for the issuance or zoning permits to offset and apply to the cost of administering this ordinance. The Town Zoning Commissioner may be appointed to serve with or without compensation and may be a Board Supervisor. If any subdivision, development, plan, plat, planned unit development, structure, or tower is proposed or commenced within the Shoreland Overlay District not in compliance with this ordinance or without the issuance of a zoning permit by the agent of Wabana Township, the Board of Supervisors may notify the County Attorney to request appropriate action pursuant to Minn. Stat. § 394.37, Subd. 3 to enforce the ordinance and to prevent, restrain, correct, or abate violations or threatened violations.

In addition, whether or not the County Attorney takes any action to enforce the ordinance, if a building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used, or any land is or is proposed to be used in violation of §§ 366.10 to 366.18 or a regulation or provision enacted or adopted by the board under §§ 366.10 to 366.18, the board, the attorney or the county where the town is situated, the town attorney, the Board of Supervisors, the Town Zoning Commissioner, or any adjacent or neighboring property owner, or any landowner of land located in Wabana Township, may institute any appropriate action in Itasca County District Court to prevent, enjoin, abate, or remove the unlawful erection, construction, reconstruction,

alteration, maintenance or use, pursuant to Minn. Stat. § 366.16. A court may award the county, town, or resident reasonable attorney's fees and court costs incurred in enforcing this ordinance.

Section 2 - Criminal Enforcement: A person who knowingly violates this ordinance is guilty of a misdemeanor under Minn. Stat. § 366.181, which shall be punishable as a misdemeanor, as provided by law.

Section 3 - Cumulative Remedies: A person who violates this ordinance may be subject to both civil and criminal enforcement, and no private settlement of a civil enforcement action shall preclude or prejudice enforcement by the town or any other persons granted the right to civilly or criminally enforce this ordinance under Sections 1 and 2 of this Article.

Article VII – Effective Date

This ordinance shall be effective on and after the first day of publication after June 5, 2019.

Dated: June 5, 2019

BY THE TOWN BOARD

Chairperson

Attest: _____
Clerk