

**Proposed Amendments to the Freeport Zoning Ordinance
(pertaining to the Board of Appeals)
For the August 4, 2021 Planning Board Meeting**

Section 104. Definitions

Note: All existing definitions will remain unchanged, with the exception of the definition of “variance” as noted here:

Variance: A departure from the requirements of the Zoning Ordinance as authorized by the ~~Zoning~~ Board of Appeals only where strict application of the Ordinance would cause undue hardship to the applicant and/or the applicant’s property. In addition, the Codes Enforcement Officer may issue a disability structures permit, pursuant to Section 601.G.2.b.(2) of the Zoning Ordinance and Title 30-A, Section 4353-A of the Maine Revised Statutes.

Section 601. Enforcement

- A. Codes Enforcement Officer: It shall be the duty of the Codes Enforcement Officer of the Town of Freeport to enforce the provisions of this Ordinance. If the Codes Enforcement Officer shall find that any of the provisions of this Ordinance are being violated, ~~he~~they shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. ~~He~~They shall order discontinuance of illegal use of land, building, or structures, removal of illegal building or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. The Codes Enforcement Officer may employ an independent, recognized consultant, if necessary, at the expense of the applicant, to assure compliance with performance standards of this Ordinance and abatement of nuisances.
- B. Legal Action and Violation: When any violation of any provision of this Ordinance shall be found to exist, including failure to comply with any subdivision or site plan approved by the Planning Board or the Project Review Board, or condition imposed by the Planning Board or the Project Review Board or Board of Appeals, the Codes Enforcement Officer shall notify the Town Manager who shall then initiate any and all actions to be brought in the name of the Town. The Town Manager shall notify the Town Council before any formal action begins.
- C. Fines: Any person, firm or corporation being the owner of or having control or use of any building or premises who violates any of the provisions hereof commits a civil violation and is subject to such fines as the Town Council shall have established for violations of this Ordinance. Each day such a violation is permitted to exist after notification thereof shall constitute a separate offense. All fines collected hereunder shall inure to the Town of Freeport.

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D. Building Permit: A Building Permit issued by the Codes Enforcement Officer shall be required for the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, change of use, location, relocation, maintenance, removal and demolition of any building or other structure, as defined in the most current Maine Uniform Building and Energy Code. No building permit shall be issued except in conformity with the provisions of this Ordinance and all other applicable ordinances of the Town of Freeport and any conditions imposed pursuant to said ordinances. A building permit secured under the provisions of this Ordinance shall expire if the work or change is not commenced within one (1) year of the date on which the permit is granted, and if the work or change is not completed within two (2) years of the date on which the permit is granted. All building permits heretofore issued shall be subject to the provisions of this Paragraph. *{Amended, Effective 06/19/12}*

E. Application for Building Permit: All applications for building permits for the erection or enlargement of any new or existing building shall be accompanied by plans drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the 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. The application shall include such other information as may be required by the Codes Enforcement Officer to determine conformance with and to provide for the enforcement of this Ordinance. Applications shall be accompanied by a fee which shall be established by the Town Council. The Codes Enforcement Officer shall maintain a public record of all building permits which are issued.

If any part of the structure is proposed to be located closer than 5 feet to the minimum front, side, rear or shore setbacks required by the applicable zoning district regulations; or if the Codes Enforcement Officer determines that special conditions such as complex curves in the property lines, or other unusual features of lot shape or topography, the Codes Enforcement Officer may require that the foundation be set and pinned by a professional land surveyor.

F. Certificate of Occupancy

1. It shall be unlawful to use or occupy or permit the use or occupancy of any land, building, structure or part thereof in which the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, change of use, location, relocation, maintenance, removal and demolition of the use of any land, building, or structure as defined in the most current Maine Uniform Building and Energy Code until a Certificate of Occupancy is issued therefore by the Codes Enforcement Officer and endorsed to the effect that the proposed use of the land, building or structure conforms with the requirements of this Ordinance. *{Amended, Effective 06/19/12}*

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2. An applicant for a building permit shall also make application for a Certificate of Occupancy, which application must be received before a building permit may be issued. Upon completion of the work permitted by the building permit, the Codes Enforcement Officer shall issue the Certificate of Occupancy upon finding that the building, structure or land and the use or occupancy thereof comply with the provisions of this Ordinance, with all provisions of any site plans or subdivision plans approved by the Planning Board or the Project Review Board and with any conditions imposed by the Planning Board or the Project Review Board or Board of Appeals. The Codes enforcement Officer shall maintain a public record of all Certificates of Occupancy which are issued. Failure to obtain a Certificate of Occupancy shall be a violation of this ordinance.

G. Board of Appeals:

1. Appointment and Composition: There shall be a Board of Appeals consisting of seven (7) voting members who are appointed by the Town Council for three (3) year terms. Members shall annually elect a ~~Chairman~~Chairperson, who shall preside at all Board meetings, a Vice-Chairperson and a Secretary, who shall provide for the keeping of the proceedings of the Board. A quorum shall consist of four (4) members qualified to vote on an appeal. A decision shall require a majority vote of those present and voting. A tie vote shall constitute denial of an appeal.
2. Powers and Duties: Appeals shall lie from ~~the any~~ decision of the Codes Enforcement Officer; or other duly authorized municipal official (in which appeals to the Board of Appeals are specifically described in this Ordinance or any other municipal ordinance). Appeals may be taken to the Board of Appeals and from the Board of Appeals to the Superior Court according to the provisions of Title 30-A, Section 2691(3)(g) of the Maine Revised Statutes. The Board of Appeals shall have the following powers and duties:
 - a. Administrative Appeals. To hear and decide where it is alleged there is an error in any order, decision, interpretation, or ruling of (i) the Codes Enforcement Officer in the administration or enforcement of this Ordinance; or any other municipal ordinance, or (ii) any other duly authorized municipal official (in which appeals to the Board of Appeals are specifically described in this Ordinance or any other municipal ordinance). —Action of the Codes Enforcement Officer; or another duly authorized municipal official; may be overturned only by a majority vote of those Board of Appeals members present and voting.
 - b. Variance Appeals. Except as provided in Section 601.G.2.b.(2), below,

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~~(1) To~~ (1) To hear and decide appeals requesting ~~such a~~ variance from the terms of this Ordinance ~~as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance only when strict application of this Ordinance to the applicant and the applicant's property would result in cause~~ undue hardship. A variance may be granted only by majority vote of those Board members present and ~~voting, and~~ voting and may include such conditions and safeguards as are appropriate under this Ordinance. The words “undue hardship” as used in this subsection means:

- ~~(1a)~~ (1a) That the land in question cannot yield a reasonable return unless a variance is granted;
- ~~(2b)~~ (2b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- ~~(3c)~~ (3c) That the granting of a variance will not alter the essential character of the locality; and,
- ~~(4d)~~ (4d) That the hardship is not the result of action taken by the applicant or a prior owner.

No variance from the seventy-five (75) foot setback from a stream in the Shoreland Zone shall be granted unless the ~~Zoning~~ Board of Appeals finds that the criteria under Section 602.F.1.~~L~~ are satisfied.

The applicant shall submit specific information to substantiate that the land in question cannot yield a reasonable return.

Except where specifically limited or prohibited, variances under this subsection may be authorized only for minimum setback, maximum building/lot ratio, parking requirements for housing for the elderly, minimum frontage, minimum area, fifteen percent (15%) expansion of non-conforming uses and buildings, and destroyed or demolished non-conforming buildings. Only the minimum variance which will alleviate the undue hardship shall be granted.

(2) Codes Enforcement Officer Authority for Disability Structures Permits. Notwithstanding the variance provisions in Section 601.G.2.b.1, above, the Codes Enforcement Officer, may issue a disability structures permit to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the person with a disability. The Codes Enforcement

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Officer may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with the disability lives in the dwelling. All medical records submitted to the Codes Enforcement Officer and any other documents submitted for the purpose of describing or verifying a person's disability are confidential. The term "structures necessary for access to or egress from the dwelling" includes ramps and associated railings, walls, or roof systems necessary for the safety or effectiveness of the ramps. For purposes of this Subsection, "disability" has the same meaning as a physical or mental disability under Title 5, Section 4553-A of the Maine Revised Statutes.

dc. ~~Limited setback reduction~~ Set-back variance for single-family dwellingsdwelling, one-family. To hear and decide requests for a Set-backsetback variance for a for single-family dwellingsdwelling, one-family, limited setback reduction for a lot in residential use, when the principal use of the lot is a dwelling, one-family, only when strict application of the Zoning Ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- (1) The need for the variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
- (2) The granting of the 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 abutting property;
- (5) That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A variance under this subsection is strictly limited and may be permitted only from the setback requirements for a dwelling, one-family, that is the primary year-round residence of the applicant.

A variance under this subsection may not exceed twenty (20%) percent of a setback requirement and may not be granted if the variance would cause the combined area of the dwelling, one-family, and any other structures to exceed the maximum permissible lot coverage.

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A variance under this subsection may exceed twenty (20%) percent of a set-back requirement, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, chapter 3, subchapter I, article 2-B of the Maine Revised Statutes, if the applicant has obtained the written consent of an affected abutting landowner.

ed. Miscellaneous Appeals. To hear and decide ~~only~~ the following miscellaneous appeals. Such appeals may be granted only by a majority vote of those Board members present and voting.

(1) Where uncertainty exists, to determine the precise location of any Zoning District Boundary line as specified in Section 303.3.

~~1) The following provisions apply for limited setback reductions for buildings and structures other than ground mounted solar panels. Such limited setback reductions may be granted in order to permit (i) the expansion or enlargement of an existing building or structure, (ii) the construction of a new building or structure which will be accessory to an existing building or structure, (iii) the construction of a new building or structure on a vacant non-conforming lot of record which can be built upon pursuant to Section 202(D) of the Ordinance; (iv) the dividing off of a new conforming lot from an existing lot of record that contains an existing building or structure; or (v) the creation of a new right of way within the required setback.~~

~~—“Limited setback reduction” means the reduction of a front, side or rear setback (but not a shore setback) by no more than 50% of the requirement of the applicable zoning district regulations except for the RR-1, RR-2 and RP-2 Districts where the reduction can be no more than 75% of the applicable zoning district regulations. A “lot in residential use” means a lot on which a dwelling has existed for at least three years prior to the date the limited setback reduction is requested or a vacant non-conforming lot of record on which a dwelling is proposed. A limited setback reduction may be granted only by a majority vote of those members present and voting and may include such conditions and safeguards as are appropriate under this Ordinance.~~

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- ~~(i) the existing buildings or structures on the lot were erected at least three years prior to the date the limited setback reduction is requested, or the lot is a vacant non-conforming lot of record which can be built upon pursuant to Section 202(D) of this Ordinance;~~
 - ~~(ii) the limited setback reduction is reasonably necessary to permit the owner or occupant of the property to use and enjoy the property in essentially the same manner as other similar properties are utilized in the zoning district;~~
 - ~~(iii) due to the physical features of the lot and/or the location of existing structures on the lot, it would not be practical to construct the proposed expansion, enlargement, the new structure, new lot, or new right of way in conformance with the currently applicable setback requirements;~~
 - ~~(iv) the impacts and effects of the enlargement, expansion, new building or structure, new lot, or new right of way on existing uses in the neighborhood will not be substantially different from or greater than the impacts and effects of a building or structure which conforms to the setback requirements. In determining whether the applicant has met this standard, the Board of Appeals may consider the presence or absence of neighborhood support for or opposition to the request; and~~
 - ~~(v) the applicant has not commenced construction of the enlargement, expansion, building or structure, new lot, or new right of way for which the limited setback reduction is requested, so that the Board of Appeals is not considering an after the fact application.~~
- ~~(2) The following requirements apply for applications for limited setback reduction for ground mounted solar panels. Notwithstanding the above requirements, if the applicant's property is benefitted by a solar easement meeting the requirements of 33 M.R.S.A. § 1401 and the setback reduction is necessary to allow the location of the ground mounted solar panels on the portion of the applicant's property that is protected by that easement, an applicant may request a reduction greater than the allowances listed above. The~~

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~~applicant for a limited setback reduction for ground-mounted solar panels must demonstrate the following:~~

- ~~(i) the limited setback reduction is reasonably necessary for obtaining the best possible orientation to the sun.~~
 - ~~(ii) due to the physical features of the lot, the location of mature trees and other buildings it is not practical to locate the ground-mounted solar panels in conformance with the applicable setback requirements;~~
 - ~~(iii) the impacts and effects of the ground-mounted solar panels on existing uses in the neighborhood will not be substantially different from the impacts and effects of the ground-mounted solar panels if they conformed to the setback requirements. In determining whether the applicant has met this standard, the Board of Appeals may consider neighborhood support or opposition to the project.~~
- ~~(3) Whenever the Board grants a limited setback reduction, the Board shall prepare a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, indicating that a limited setback reduction has been granted and setting forth the date it was granted. The applicant shall cause the certificate to be recorded in the Cumberland County Registry of Deeds within 90 days of approval of the limited setback reduction, or the approval shall be invalid.~~
- ~~(4) The granting of a limited setback reduction pursuant to this subsection 601(G)(2)(d) shall not require or be construed as the granting of a variance to relieve hardship. Notwithstanding Section 601(g)(4)(f), the denial of a variance request shall not preclude a subsequent application for a limited setback reduction under this subsection and the denial of a request under this subsection shall not preclude a subsequent application for a variance. If an application for a variance is pending, the Town shall not accept an application for a limited reduction of the same setback dimension on the same property; if an application for a limited setback reduction is pending, the Town shall not accept an application for a variance from the same setback dimension on the same property.~~

~~{Amended, Effective 08/05/14}~~

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~~ed. Mislocated building appeal. To hear and decide, only by majority vote of those members present and voting, setback reduction appeals in specific cases where existing buildings are found to be in violation of the setback requirements and where the Board concludes it would not serve the public interest to require the building to be relocated or removed and that allowing the building to remain in its existing location would not be contrary to the public health, safety or welfare. Before granting an appeal under this subsection, the Board must find that the setback violation is not the result of a willful, premeditated act or of gross negligence on the part of the applicant, a predecessor in title to the applicant or an agent of either of them. An appeal under this subsection shall permit the existing building or structure to remain, but shall not authorize any expansion, enlargement or relocation of the structure.~~

3. Conditions attached to Variances

The Board of Appeals may attach such condition(s), in addition to those required by other provisions of this Ordinance, as it finds necessary to ~~insure~~ensure compliance with all standards and all other applicable requirements of this Ordinance. Violation of any of those conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; hours of operation; operation controls; professional inspection and maintenance; sureties; location of piers and docks; parking and signs; and types of construction. When a building or structure is erected pursuant to a variance approved by the Board of Appeals, the Board may require the location of the foundation to be set and pinned by a professional land surveyor.

4. Appeals Procedure

- a. ~~General. When the owner of property or authorized agent is informed by the Codes Enforcement Officer that an appeal is required, a~~General. When the owner of property or authorized agent is informed by the Codes Enforcement Officer that an appeal is required, aWhen a building or structure is erected pursuant to a variance approved by the Board of Appeals, the Board may require the location of the foundation to be set and pinned by a professional land surveyor.~~When the owner of property or authorized agent is informed by the Codes Enforcement Officer that an appeal is required, a~~An application for ~~the permit~~a ~~variance, administrative, or miscellaneous appeal~~ shall be filed with the Board of Appeals on forms provided for this purpose. The application shall be accompanied by a filing fee which shall be established by the Town Council, all information which is required for application for a building permit, and other information required by this section of the Ordinance. The applicant may submit any additional information relevant to the appeal.

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An administrative appeal shall be commenced within thirty (30) days of the order, decision, interpretation or ruling ~~of the Codes Enforcement Officer, or other municipal official being appealed.~~ A variance appeal or miscellaneous appeal which does not allege an error in any order, decision, interpretation, or ruling of the Codes Enforcement Officer or other municipal official may be commenced at any time.

- b. Variance ~~requests~~ appeals within a shoreland zone. A copy of each variance ~~request~~ appeal, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals prior to taking action on the variance appeal.

If a variance appeal within a shoreland zone is approved, a copy of the variance granted by the Board of Appeals to all land areas within the Shoreland Zone shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

- c. Appeal application requirements. The applicant for a variance, administrative appeal, or miscellaneous appeal ~~or a limited setback reduction~~ must present plans drawn to scale showing all lot lines of the property, the location of each existing building or structure and the location of each proposed expansion, enlargement or new building or structure. Upon review of the application, the Codes Enforcement Officer may require the applicant to provide a standard boundary survey showing the foregoing information if the Codes Enforcement Officer determines that the locations of the lot lines relevant to the request for a variance or a limited setback reduction cannot be determined accurately without a survey. In addition, the Board of Appeals, upon review of the application, may require a standard boundary survey and additional information such as, but not limited to, copies of recorded deeds and such other materials as the Board deems necessary to render its decision. The applicant is ultimately responsible for providing documentation and verification of the facts asserted by the applicant, and any decision of the Board based on incorrect or inaccurate information provided by or on behalf of the applicant may be declared invalid by the Board and neither the Board nor the Town shall be stopped from applying and enforcing the provisions of this Zoning Ordinance based on correct and accurate information subsequently discovered.

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d. Procedures for administrative appeals.

(1) An administrative appeal of a final decision of the Project Review Board on a subdivision application shall be filed and reviewed in accordance with Article 15 of the Freeport Subdivision Ordinance.

(2) All other administrative appeals are *de novo* and shall follow the following procedure:

(a) The Codes Enforcement Officer shall transmit to the Board of Appeals the decision and all documents and other evidence on which the decision was based, which may be considered as evidence in the *de novo* proceeding.

(b) Before making a decision on any ~~appeal or application~~ administrative appeal, the Board of Appeals shall hold a public hearing within ~~sixty (60)~~ days of receipt of an application unless the parties agree to an extension of the sixty (60) day period.

(c) Notice of the nature of the appeal and the time and place shall be published at least seven days in advance of the date of the public hearing in a newspaper of general circulation in the area. Owners of property within two hundred feet (200') from the property which is the subject of the public hearing, the Planning Board, the Project Review Board and the Town Manager shall be mailed copies of the notice of hearing at least ten (10) days in advance of the hearing date. For the purposes of this subsection, the persons against whom municipal property taxes are assessed shall be considered owners of property. Failure of any property owner to receive notice by mail under this subsection shall not invalidate ~~this any~~ action by the Board of Appeals.

(d) At the public hearing, all persons shall have the right to present additional testimony and documentary evidence, and any party has the right to cross-examine witnesses. The Codes Enforcement Officer or their designee shall attend all public hearings and may present to the Board all plans, photographs, or other material they deem appropriate to a proper understanding of the appeal or application. Persons wishing to be heard by the Board may appear in person or through an agent or attorney with a written letter of authorization included in the submission. The Board of Appeals may adopt additional rules of procedure governing the conduct of meetings.

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~~(5e) The hearing shall not be continued to other times except to obtain additional evidence which cannot be produced at the scheduled hearing and only after a vote of the majority of the Board members present and voting to continue the hearing.~~

~~(5f) The standard of review is whether, on the basis of the evidence before the Board of Appeals, the application complies with the requirements of this Ordinance or any other applicable municipal ordinance. The burden of proof is on the applicant. The Board of Appeals has authority to grant or deny a permit or approval or to remand the matter to the Codes Enforcement Officer or other municipal official for further proceedings.~~

~~(6g) e. The Codes Enforcement Officer or designated assistanttheir designee shall attend all public hearings and may present to the Board all plans, photographs, or other material he they deems appropriate to a proper understanding of the appeal or application. Persons wishing to be heard by the Board may appear in person or through an agent or attorney with a written letter of authorization included in the submission. The Board of Appeals may adopt additional rules of procedure governing the conduct of meetings. The hearing shall not be continued to other times except to obtain additional evidence which cannot be produced at the scheduled hearing and only after a vote of the majority of the members present and voting to continue the hearing. If within sixty (60) days of the public hearing the Board has not reached a decision, the application shall be deemed to have been denied, unless the bBoard and the applicant agree to an extension of the sixty (60) day period. A decision of the Board of Appeals becomes final when it is rendered and may not only be reconsidered except in accordance with the provisions of subsection (I)(4)(d) of this Section 601. 30-A MRSA § 2691(3)(F).~~

~~fe. Denied appeal or application. If the Board of Appeals shall deny an appeal or application, a second appeal or application of a similar nature for the same property may not be brought before the Board within one (1) year of the date of denial of the first appeal or application, unless, in the opinion of the majority of the Board, substantial new evidence can be brought before the Board, or unless the Board finds, in its sole and exclusive judgment, that an error or mistake of law or misunderstanding of fact has been made.~~

~~g. A permit secured under the provisions of this Ordinance by vote of the Board of Appeals shall expire if the work or change involved is not commenced within one (1) year of the date on which the permit was issued. Upon application, before expiration of the original permit, to the Codes Enforcement Officer, the officer may grant a one (1) year extension,~~

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~~without change, of the permit. The permit shall expire if the work or change is not completed within two (2) years of the issuance of the original permit.~~

~~h. When a building or structure is erected pursuant to a variance or a limited setback reduction approved by the Board of Appeals, the Board may require the location of the foundation to be set and pinned by a professional land surveyor.~~

~~Shoreland Zoning Variances: A copy of all variances granted by the Board of Appeals to all land areas within the Shoreland Zone shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.~~

f. Certificates. Whenever the Board grants a variance or the Codes Enforcement Officer grants a disability structures permit under this Section G.2.b.2, the Town shall prepare a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, indicating that a variance or disability structures permit has been granted and setting forth the date it was granted, prepared in a recordable form. The applicant shall cause the certificate to be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the final written approval of the variance or the disability structures permit, or the approval shall be invalid. The variance or the disability structures permit is not valid until recorded as provided in this section.