

Overlay District to Increase Stream Protection that Utilizes Transfer of Development Rights

Amendments to the Town of Scarborough Shoreland Zoning Ordinance and Zoning Ordinance to Create a Stream Protection 2 District Along a Portion of Stuart Brook

[Note: The example below illustrates how Scarborough's Development Transfer Provision can be implemented to protect a high value stretch of stream identified as a priority in the Town's comprehensive plan. The Town of Scarborough Comprehensive Plan proposed that the existing Stream Protection District along Stuart Brook east of the Turnpike be expanded from 75 feet wide to 250 feet wide on both sides of the brook to better protect the resource. Language from the created overlay district and related amendments to the Shoreland Zoning follow.]

To protect the habitat and water quality benefits provided by the Stuart Brook riparian zone, Scarborough has created a development transfer provision that allows for the transfer of residential units for denser development in other parts of the parcel outside of the Stuart Brook overlay or to properties within designated Growth Areas. Transfers of development away from the stream corridor are eligible for a fifty percent density bonus and the land within the stream corridor is protected through a conservation easement or similar. The overall intent is that sensitive areas such as this stretch of Stuart Brook are permanently protected, the landowner does not lose the number of allowable units, but becomes eligible to build or profit from the sale of even more unit allowances by transferring the allowed density to areas of town more appropriate for growth.]

The following are excerpts from the Scarborough Shoreland Zoning Ordinance pertaining to development transfer and the Stuart Brook (Stream Protection 2 District) overlay zone:

Section 15. A. Minimum Lot Standards of the Shoreland Zoning Ordinance

4. If a property owner voluntarily transfers the fee simple ownership of land within the Stream Protection 2 District to the Town of Scarborough or to a land trust or other conservation organization approved by the Planning Board for the purpose of public open space and public access to or along the stream, the property owner shall be entitled to a density bonus. The amount of the bonus shall be one and a half times the number of the dwelling units that could have been built on the transferred land within the Stream Protection 2 District without consideration of the stream setback requirements based on the net residential area and density for the zone that determines the applicable density and lot area for the land based upon the requirements as set out in the Zoning Ordinance. This bonus shall be in addition to any other density bonus provided for in the Zoning Ordinance including the density bonus for the transfer of development rights. The units resulting from this density bonus may be:

- a. Developed on another portion of the same parcel on which development is permitted that is not located within the Stream Protection 2 District, or
- b. Transferred to another parcel in accordance with the Development Transfer Provisions of Section VIID of the Zoning Ordinance.

Units resulting from this density bonus must be built or transferred in accordance with Section VIID of the Zoning Ordinance within ten (10) years of the date of the transfer of the land to the Town, land trust, or conservation organization. The right to build or transfer a unit shall lapse at the conclusion of the ten (10) year period. The Planning Department shall establish and maintain a registry of any bonus units created under this provision and shall track the utilization of those units over time to ensure compliance with these provisions.

The Stuart Brook (Stream Protection 2) overlay district also establishes more protective resource setback requirements as follows:

Section 15. B. Principal and Accessory Structures

1. All new principal and accessory structures shall be set back at least two hundred fifty (250) feet from the normal high water line in the Stream Protection 2 District and seventy-five (75) feet from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland in the other districts.

In addition:

- a. The water body or wetland setback provision shall neither apply to structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.