

SHORELINE PROTECTION OVERLAY ZONING DISTRICT 5-7-2017

ORDINANCE 2017-XXX
Beach Protection Overlay Zoning District

WHEREAS, the Long Beach Town Council on June 10, 2002, adopted a Zoning Code of the Town of Long Beach, LaPorte County, Indiana which is located at Chapter 154 of the Long Beach Town Code; and

WHEREAS, the Long Beach Advisory Plan Commission has initiated an amendment to the text portion of the Zoning Code in order to address sections concerning view protection standard; and

WHEREAS, a public hearing has been held before the Town of Long Beach Advisory Plan Commission, which has certified its proposal to amend the text of the Zoning Code to the Long Beach Town Council; and

WHEREAS, notice has been given in accordance with Indiana Code of all proceedings concerning this text amendment to the Zoning Code; and

WHEREAS, the Long Beach Town Council concurs with its Advisory Plan Commission and **has recieved** its proposal **regarding amending** the text of the Zoning Code; and

WHEREAS, In conjunction with the Town's 2016 Comprehensive Plan Update and in recognition that the economic and environmental well-being of the Town of Long Beach is directly related to the protection of its Lake Michigan shoreline and in recognition that the scenic views of Lake Michigan are one of our communities most valued assets;

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the Long Beach Town Council as follows:

Chapters 157 inclusive of **TITLE XV LAND USAGE** of the Long Beach Town Code shall read as follows:

Beach Protection Overlay Zoning District

TITLES

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Beach Protection Overlay Zoning District

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157.000 Purpose of the Zoning District

The Town of Long Beach is committed to protecting life and property, reducing costs to the public, and minimizing damage to the natural resources of the coastal zone that might result from inappropriate development of environmentally sensitive areas. The purpose of the Beach Protection Overlay Ordinance is based on the recognition that:

- The economic and environmental well-being of the Town of Long Beach is directly related to the protection of its Lake Michigan shoreline areas. These areas have traditionally been enjoyed by visitors and property owners alike. The right to access and recreational use of these areas has been confirmed by the Indiana Court of Appeals.
- The Lake Michigan shoreline has unique physical, biological, economic and cultural attributes.
- Future land development and redevelopment should not be conducted at the expense of these attributes.
- Pollution, impairment and/or destruction of the shoreline areas should be minimized.

The provisions of this Beach Protection Ordinance are established with the following intent:

- To protect the integrity of the coastal area that is a distinctive feature of the community and the region.
- To ensure that development is consistent with the natural limitations of the coastal ecosystem.
- To ensure that public access, areas of cultural significance to the region, wildlife, natural habitat, and other resources are not negatively impacted by inappropriate development of the area.
- To conserve, protect develop, or restore natural resources and ecosystems of the beach and dunes.
- To recognize the potential for coastal hazards to affect life and property.
- To protect the stability of the Lake Michigan shoreline and thereby reduce the risk of coastal erosion.

These goals are supported in the 2016 update of the Comprehensive Plan of the Town of Long Beach, IN. They are also supported by the Coastal Hazards Planning Guide for Indiana Coastal Communities (July 2016). Section IV of that guide served as a template for the development of this ordinance.

157.999 Definitions

“Accessory Structure ” means a detached structure that that is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related, and is located on the same zoning lot as the principal structure or use. Including but not limited to patios, gazebos, garages, workshops, sheds, and carports.

“Development” means any manmade change to improved or unimproved real estate, including but not limited to the construction of buildings, structures, or accessory structures; the construction of additions or substantial alterations of buildings, structures or accessory

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structures; the placement of mobile homes; ditching, dredging, filling, grading, paving, excavation, or drilling operations, and the deposition or extraction of earthen materials .

“Hard Structure” includes hybrid of riprap and natural methods, riprap, 45 degree slanted seawall with toe stones at the base, and vertical structures such as revetments or seawalls and groins.

“Ordinary High Water Mark” means the following as defined by Title 312 Article 1 Rule 1 Section 27 in the Indiana Administrative Code.

The line on the shore of a waterway established by the fluctuations of water and indicated by physical characteristics. Examples include a clear and natural line on the bank, shelving, changes in the character of the soil, the destruction of natural vegetation, or the presence of litter or debris. “Coastal Slope” refers to the first major slope or biggest drop north of Lake Shore Drive.

“Principal Use or Structure” means any primary living quarters, main commercial buildings, and any functional appurtenances to those structures such as septic systems and infrastructure. Not included area: roads, utilities, and accessory structures.

“Lake Shore Drive” shall mean the dedicated public way which is the entire width between the dedicated street boundary. Lake Shore Drive dedicated street is 50 feet. The measurement of 106.6 feet shall be taken from the Northerly boundary of Lake Shore Drive.

157.015 Applicability

This ordinance shall apply to the Lake Michigan Coastal Overlay Zone, that is all lands lying north of the northern edge of the dedicated right of way of the street known as Lake Shore Drive in Long Beach, IN. This boundary extends across R-1 and R-2 zoning districts. All development within this overlay district shall be subject to the requirements of this ordinance.

157.020 Uses Not Allowed

A. No Principal Structure or Accessory Structure shall be built lakeward at a distance greater than 106.6 feet from the northern edge of the dedicated street known as Lake Shore Drive. This distance is consistent with the existing View Protection Ordinance (154.060 B 1, 6/10/2002). The permit application for any construction in the Coastal Protection Zone must include a survey including the northerly (lakeward) property line clearly showing any Public Trust property **and the Ordinary High Water Mark**. All structures shall abide by the rules and regulations of FEMA.

B. Exceptions

1. Utility poles, lines, and related equipment without permanent foundations
2. Public Service Signs as permitted by the Long Beach Town Council.

157.025 Encroachment

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- A. A construction permit for any construction shall be obtained from the Indiana Dept of Natural Resources.
- B. No permit shall be granted if the encroachment adversely affects the public trust land.
- C. Existing encroachments shall not be enlarged, extended or added to.

157.030 LOMA Letter Requirement

Before any construction permits for construction in the floodplain or flood fringe zone can be issued, LOMA letters from FEMA must be obtained and be included with the permit to the Long Beach Building Commission.

157.040 Shoreline Protection Structures

The Town of Long Beach and the Indiana Department of Natural Resources in their "Coastal Planning Guidance for Indiana Coastal Communities" July 2016 acknowledges that seawalls, revetments, retaining walls, groins and other such structural or "hard" methods designed with the intention of forestalling erosion also alter natural shoreline processes result in a variety of negative effects on coastal resources, including but not limited to effects on sand supply, public access, coastal views, natural landforms, and overall beach dynamics. Therefore the priorities of shoreline protection from highest to lowest are:

1. Proper maintenance of existing vegetation
2. Planting or restoration of riparian vegetation
3. Hybrid of natural and hard methods below
4. Riprap
5. 45 degree slanted seawall with toe stones at the base ("hard structure")
6. Vertical structures such as revetments or seawalls ("hard structure").

Protective structures may be developed on private property within 106.6' of the Northerly boundary of Lake Shore Drive and southward of the OHWM upon receipt of a Building Permit from the Long Beach Building Commission.

The following requirements apply to construction or modification proposals for the above priorities 3-6:

- The applicant must first establish that there is no feasible and prudent non-structural alternative to the construction of the proposed shoreline structure, including the inability to relocate any structure threatened because of coastal erosion on the applicant's zoning lot of record.
- The proposed structure is the minimum necessary to provide for the level of protection that is necessary to achieve the purpose and intent of this ordinance and is placed as far landward as is practical. This needs to be confirmed by a certified coastal engineer (see below).
- Adverse impact on adjacent private property and/or public beach stops access is minimized.
- A long term maintenance plan with specifications regarding how to maintain the integrity of the structure, shoreline and neighboring property must be included with the permit

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application. This responsibility is to be recorded on the deed and is transferable into perpetuity with the sale of the property.

- All necessary permits have been received from the DNR, US Army Corps of Engineers, and FEMA (LOMA letter).
- Before approving any shore protection structure or modification thereof, the Long Beach Board of Zoning Appeals (BZA) shall hold a public hearing on the proposed structure. Notification shall be sent to all property owners within 300 feet of the proposed shore protection at the expense of the applicant. A sign shall be posted on the property as spelled out in the BZA rules 30 days prior to a scheduled BZA hearing.
- The BZA will decide whether or not to recommend that the
- Building Commission grant the permit based on 154.093 (see above).
- Before the above public hearing the developer requesting permission to build “hard” structures (3-6 above) shall be required to obtain the written opinion of a certified coastal engineer chosen by the Building Commission. This opinion shall be received by the Board of Zoning Appeals before the hearing can be scheduled.
- As the State of Indiana does not certify coastal engineers, one may be chosen from Michigan’s list which can be found at <http://www.mishorelinepartnership.org/find-a-shoreline-contractor.html> or from a list of Indiana Engineering and Environmental Consulting Firms provided by the Chicago District. Additional firms can found at <http://www.lrc.usace.army.mil/Portals/36/docs/regulatory/pdf/consult-IL.pdf>.
- The cost of this opinion is to be born by the applicant. The plan must also be approved by the Long BeachTown Engineer the cost to be born by the applicant.

Given the reality that many coastal properties in Long Beach already have “hard” protection, and that continuous seawalls are less prone to erosion than discontinuous or crenellated ones, a property owner **building a seawall** with an adjacent seawall extending to the property line can connect to the neighboring seawall (with the neighbor’s permission). **Note however this connection must be approved by the above mentioned coastal engineer to ensure that the entire seawall is constructed utilizing best practices to maximize beach protection. Under no circumstances is the height of this connection to exceed the height of the higher of the two connecting seawalls.**

If a proposed seawall does not connect to an adjoining seawall, it must have a straight tie back wall connected to a toe stone at the base of the Coastal Slope.

- This wall must abide by the 6’ setback (Chapter 154 Appendix A Town Schedule of Zoning District Regulations) on the lakeward corner however it may extend **by a straight line** to the property line **at the base of the coastal slope** with the permission of the owner of the adjoining property on that side. If the property adjoins town property, that permission must be obtained by application for variance from the BZA. **This incursion into the 6’ side setback must also be approved by the above referenced coastal engineer to ensure that it’s construction also utilizes best practices to minimize beach erosion. It can be no higher than the rest of the seawall.**

157.050 Disclosure of Coastal Hazards

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Prior to the issuance of required permits for development in the Lake Michigan Coastal Overlay Zone, the applicant shall provide a copy of the Coastal Hazard and Liability Waiver, provided by the Building Commission. This shall be signed by the property owner and recorded in the LaPorte County deed records. It should set forth the following:

- A statement that the property is subject to chronic natural hazards and that development thereon is subject to risk from such hazards;
- A statement that the property owner assumes all risk of damage from natural hazards associated with the development of the subject property; and
- A statement releasing the jurisdiction, its agents, and its employees from any and all claims that may arise as a result of damages, losses, or injuries sustained by the property owner and his/her heirs, successors and assigns, from natural hazards.
- Upon any transfer of real property by sale, exchange, or lease, the transferor shall deliver to the transferee a Coastal Hazard Disclosure and Liability Waiver, a form provided by the Long Beach Building Commission, signed by the transferee, and recorded in the deed records.

157.060 Vegetative Buffer Strips within the Coastal Zone

Vegetative buffers protect water quality and shoreline habitat, preserve scenic and aesthetic character, and control coastal erosion and flooding. To preserve the fragile ecosystem, vegetative standards will apply to the Lake Michigan Coastal Overlay Zone.

The following standards apply to the Lake Michigan Coastal Overlay Zone beyond 106.6 feet from the northerly edge of Lakeshore Drive. .

- Vegetation removal will be limited to the amount necessary for Development of the site.
- Protection of tree crowns and root zones shall be required for all trees planned for retention.
- Removal of trees and ground cover shall require review and approval by the by the Building Commission to ensure that impacts on the coastal ecosystem are minimized. To stabilize the soil with root structures, stumps of trees cleared or harvested must remain undisturbed in the ground.
- Vegetation shall be restored in areas affected by construction activities.
- Pictures documenting that vegetation need to be supplied to the Building Commission before construction begins.
- New plantings must be native to the Lake Michigan Shoreline.
- Post construction, only minimal alteration of vegetation using selective pruning or thinning techniques necessary to obtaining a filtered view of the water shall be acceptable.
- Tree removal shall be limited to fallen, dead or dangerous trees and again stumps shall be left in place.
- In cases where there is no previously existing vegetative buffer zone, the landowner is encouraged to plant a buffer zone with native vegetation.

157.070 Site Plan Standards within the Lake Michigan Coastal Overlay Zone

In addition to the usual site plan requirements of the Town of Long Beach (151.03), the following standards will be required in the Lake Michigan Coastal Overlay Zone;

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- The site plan shall demonstrate that impact to fish , birds, wildlife, and native vegetation is minimized by preserving natural habitat.
- The site plan shall demonstrate that erosion shall be prevented, and that the risk of Structural loss due to changes in future lake levels is minimized.
- The site plan shall demonstrate that the natural character and aesthetic values of the coast are maintained by minimizing the visual impact of Development.
- Site Development shall be fitted to the topography and soil as to create the least potential for vegetation loss and site disturbance.
- The Long Beach topographic ordinance (154.112) shall be followed and all permits for access for heavy equipment to the Lake Michigan Coastal Overlay shall be obtained.
- Pre-construction grades are to be maintained.
- Heavy Equipment access permits must be obtained no matter the method of access to the Lake Michigan Coastal Overlay Zone.
- Pictures of the site need to be submitted to the building commissioner before the access permit is issued.
- Fine for unauthorized alteration of topography will be \$500.00 dollars / day starting on notification of the property owner. They will end when the building commissioner or inspector inspects the property and declares the violation rectified.
- The heavy equipment may remain within the shore protection zone for no more than 30 days.
- Under no circumstances is heavy equipment to be parked below the ordinary high water mark from Memorial Day to Labor Day as it creates a potential hazard to children at the beach.
- No other work other than the work for which the access permit was obtained can be done by that equipment.
- Violation of any of the rules in this bullet point shall result in revocation of the access permit and the heavy equipment shall be removed from the Coastal Overlay Zone immediately. Failure to do so shall result in a fine of \$500.00 / day.
- Site plans shall include location and descriptions of all shoreline types and natural coastal resources, including but not limited to soil type, dune crests, ordinary high water mark, tree line.

157.999 Penalties For Non-Compliance.

Any person violating any of the provisions of Chapter 157 where not otherwise specified shall be fined:

(A) Not less than One-hundred dollars (\$100) and not more than Two thousand-five hundred dollars (\$2,500) for the first violation of the ordinance and

(B) Not less than five hundred dollars (\$500) and not more than Seven thousand five hundred dollars (\$7500) for the second violation of the ordinance and each subsequent violation.

(C.) Each day that any violation continues shall be a separate offense punishable as described herein.

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ALL OF WHICH IS PASSED AND ADOPTED by the Town Council of the
Town of Long Beach, LaPorte County, Indiana, this _____ day of
_____, 201_.

LONG BEACH TOWN COUNCIL

By:

Peter Byvoets, President

Robert Lemay

Joy Schmitt

Jane Neulieb

Nick Meyer

ATTEST:

William deFuniak : Clerk-Treasurer