

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

S.P. 555 - L.D. 1490

An Act To Amend the Mandatory Shoreland Zoning Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §436-A, sub-§1-B is enacted to read:

1-B. Agriculture. "Agriculture" means the production, keeping or maintenance for sale or lease of plants or animals, including, but not limited to, forages and sod crops, grains and seed crops, dairy animals and dairy products, poultry and poultry products, livestock, fruits and vegetables and ornamental and greenhouse products. "Agriculture" does not include forest management and timber harvesting activities.

Sec. 2. 38 MRSA §436-A, sub-§4-A is enacted to read:

4-A. Footprint. "Footprint" means the entire area of ground covered by the structures on a premises, including cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

Sec. 3. 38 MRSA §436-A, sub-§6, as amended by PL 1997, c. 726, §1, is further amended to read:

6. Functionally water-dependent uses. "Functionally water-dependent uses" means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. These uses include, but are not limited to, commercial and recreational fishing and boating facilities, ~~excluding recreational boat storage buildings,~~ finfish and shellfish processing, ~~fish~~ fish-related storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, ~~retaining walls,~~ shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

Sec. 4. 38 MRSA §436-A, sub-§9-A, as enacted by PL 1993, c. 196, §2, is amended to read:

9-A. Outlet stream. "Outlet stream" means any perennial or intermittent stream, as shown on the most recent ~~edition of a 7.5 minute series or, if not available, a 15 minute series topographic map produced by,~~ highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

Sec. 5. 38 MRSA §436-A, sub-§11-A, as amended by PL 1995, c. 92, §1, is further amended to read:

11-A. Stream. "Stream" means a free-flowing body of water from the outlet of a great pond or the ~~point of confluence of 2 perennial streams as depicted by a solid blue line on the most recent edition of a,~~ highest resolution version of the national hydrography dataset available from the United States Geological Survey 7.5 minute series topographic map or, if not available, a 15 minute series topographic map, on the website of the United States Geological Survey or the national map to the point where the body of water stream becomes a river or flows to where the stream meets the shoreland zone of another water body or wetland within a shoreland area. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

Sec. 6. 38 MRSA §436-A, sub-§§12 and 13, as enacted by PL 1987, c. 815, §§3 and 11, are amended to read:

12. Structure. "Structure" means anything built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind, ~~together with~~ and anything constructed or erected ~~with a fixed location~~ on or in the ground, exclusive of fences and poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors. "Structure" includes a structure temporarily or permanently located. As used in this subsection, "service drop" has the same meaning as in section 952.

13. Timber harvesting. "Timber harvesting" means the cutting and removal of ~~trees from their growing site and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads~~ timber for the primary purpose of selling or processing forest products. "Timber harvesting" does not include the ~~clearing of land for approved construction~~ cutting or removal of vegetation within the shoreland zone when associated with any other land use activities.

Sec. 7. 38 MRSA §438-A, sub-§1-B, ¶A, as enacted by PL 1995, c. 542, §1, is amended to read:

A. In addition to the notice required by Title 30-A, section 4352, subsection 9, a municipality shall provide written notification to landowners whose property is being considered by the municipality for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known

addresses of the persons against whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the municipal clerk a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The municipality must send notice not later than 14 days before ~~its planning board votes to establish~~ it holds a public hearing on adoption or amendment of a zoning ordinance or map that places the landowners' property in the resource protection zone. Once a landowner's property has been placed in a resource protection zone, individual notice is not required to be sent to the landowner when the zoning ordinance or map is later amended in a way that does not affect the inclusion of the landowner's property in the resource protection zone.

Sec. 8. 38 MRSA §439-A, sub-§4, as amended by PL 1997, c. 726, §3, is further amended to read:

4. Setback requirements. Notwithstanding any provision in a local ordinance to the contrary and except as provided in this subsection, all new principal and accessory structures and ~~substantial~~ expansions of such structures within the shoreland zone as established by section 435 must meet the water body or wetland setback requirements approved by the board, except functionally water-dependent uses. ~~For purposes of this subsection, a substantial expansion of a building is an expansion that increases either the volume or floor area by 30% or more.~~ This subsection is not intended to prohibit a municipal board of appeals from granting a variance, subject to the requirements of this article and Title 30-A, section 4353, nor is it intended to prohibit ~~a less than substantial~~ an otherwise permissible expansion of a legally existing nonconforming structure, as long as the expansion does not create further nonconformity with the water body or wetland setback requirement.

A. All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body or wetland setback requirements approved by the board. An expansion of a legally existing nonconforming structure pursuant to this subsection may not create further nonconformity with the water body or wetland setback requirement.

B. Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement.

(1) Notwithstanding this paragraph, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable standards of land use adopted by the municipality are met and the expansion is not prohibited by paragraph A.

(a) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

C. All other legally existing nonconforming principal and accessory structures that do not meet the water body or wetland setback requirements may be expanded or altered as follows, as long as other applicable standards of land use adopted by the municipality are met and the expansion is not prohibited by paragraph A or B.

(1) For structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

(2) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland must meet the footprint and height limits in subparagraph (1).

(3) In addition to the limitations in subparagraphs (1) and (2), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland must meet the footprint and height limits in subparagraph (1).

D. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Water body" means a great pond, river or stream.

(2) "Wetland" means a coastal wetland or freshwater wetland.

Plans approved by the municipality for expansions under this subsection must be filed in the registry of deeds of the county in which the property is located within 90 days of approval.

Sec. 9. 38 MRSA §439-A, sub-§4-A, as amended by PL 1999, c. 243, §§6 and 7, is repealed.

Sec. 10. 38 MRSA §439-A, sub-§6, as amended by PL 2007, c. 292, §22, is further amended to read:

6. Clearing of vegetation. Within the shoreland area, municipal ordinances ~~shall~~ must provide for effective vegetative screening between buildings and shorelines. Notwithstanding any provision in a local ordinance to the contrary, vegetative screening requirements ~~shall~~ must be no less restrictive than the following:

A. Within a strip extending 100 feet inland from the normal high-water line of a great pond classified as GPA under section 465-A or a river that flows to a great pond classified as GPA under section 465-A or within a strip extending 75 feet inland from the normal high-water line of other water bodies or the upland edge of a wetland, there ~~shall~~ may be no cleared opening or openings, ~~except for approved construction, greater than 250 square feet~~, and a well-distributed stand of vegetation ~~shall~~ must be retained. The restrictions in this paragraph do not apply to the construction of a structure or the establishment of a land use within 75 feet of the normal high-water line of a water body or upland edge of a wetland that is specifically allowed by municipal ordinance in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the commissioner;

B. Within a shoreland area zoned for resource protection abutting a great pond there ~~shall~~ may be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards; and

C. Selective ~~Except as otherwise provided in this paragraph, selective~~ cutting of no more than 40% of the total volume of trees 4-5 4 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period, as long as a well distributed stand of trees and other natural vegetation remains. Rules adopted by the board may allow for 70% of a lot to be nonvegetated in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the commissioner.

The board may adopt more restrictive guidelines consistent with the purposes of this subchapter, which ~~shall~~ must then be incorporated into local ordinances.

Sec. 11. 38 MRSA §439-A, sub-§6-A is enacted to read:

6-A. Clearing of vegetation; exception. The following exceptions to the standards governing the clearing of vegetation apply.

A. The standards in subsection 6, paragraphs A and C do not apply to properties that are located within areas designated as commercial fisheries and maritime activities districts or other equivalent zoning districts approved by the commissioner that support commercial fisheries and maritime activities if:

(1) The commissioner determines that special local conditions exist and a local municipal ordinance is approved in accordance with section 438-A, subsection 3; and

(2) The districts are in existence at the time this subsection becomes effective.

B. The standards in subsection 6, paragraphs A and C and any standards related to the clearing of vegetation contained in a municipal ordinance enacted in accordance with section 438-A, subsection 3 do not apply to remediation activities that are necessary to clean up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the commissioner that is part of a state or federal brownfields program or a voluntary response action program under section 343-E and that is located along:

(1) A coastal wetland; or

(2) A river that does not flow to a great pond classified as GPA under section 465-A.

Sec. 12. 38 MRSA §439-A, sub-§7, ¶D, as enacted by PL 1993, c. 318, §1, is amended to read:

D. The total ~~ground floor area~~ footprint of all principal and accessory structures is limited to a maximum of 1,500 square feet.

Sec. 13. 38 MRSA §439-B, sub-§3, as enacted by PL 2007, c. 593, §2, is repealed and the following enacted in its place:

3. Application. This section does not apply to:

A. Activities resulting in less than one cubic yard of earth material being added or displaced;

B. A person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and

C. Municipal, state and federal employees engaged in projects associated with that employment.

Sec. 14. 38 MRSA §441, sub-§3, ¶C, as amended by PL 1991, c. 346, §10, is further amended to read:

C. Keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected. ~~On a biennial basis, beginning in 1992, a summary of this record must be submitted by March 1 to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection;~~ and