



DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF CHELSEA) MANDATORY SHORELAND ZONING ACT
KENNEBEC COUNTY)
SHORELAND ZONING ORDINANCE)
ORDER #37-2017) APPROVAL WITH CONDITIONS

Pursuant to the provisions of 38 M.R.S. §§ 435-448, the Mandatory Shoreland Zoning Act (“Act”), and the Maine Department of Environmental Protection’s Guidelines for Municipal Shoreland Zoning Ordinances, 06-096 C.M.R. ch. 1000 (amended January 26, 2015) (“Guidelines”), the Department of Environmental Protection has considered the request for approval of the Town of Chelsea Shoreland Zoning Ordinance (Ordinance) and Shoreland Zoning Map (Map), as amended on June 15, 2017, and FINDS THE FOLLOWING FACTS:

1. The Act requires municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of great ponds and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the Guidelines. 38 M.R.S. §§ 435 & 438-A.
2. The Act specifies that before a locally adopted shoreland zoning ordinance, or amendment to that ordinance, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (“Commissioner”). The Commissioner may approve, approve with conditions, or deny the ordinance or amendment. If denied, or approved with conditions, such action must be preceded by notice to the municipality. If the Commissioner fails to act within 45 days of receipt of the ordinance or amendment, then the ordinance or amendment is automatically approved. 38 M.R.S. § 438-A.
3. On July 10, 2017 and August 24, 2017, the Town of Chelsea submitted its amended Shoreland Zoning Ordinance and Map as adopted on June 15, 2017 to the Department for review:
 - A. The submitted amendments, received by the Department on July 10, 2017 and August 24, 2017, make numerous revisions throughout the Ordinance, including minor corrections and clarifications, as well as substantive changes in standards including, but not limited to: expansion of nonconforming structures, lot coverage, revegetation requirements, and associated definitions. The submitted amendments purport to update the Ordinance to bring it into compliance with the Guidelines as amended on January 26, 2015.

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- B. The amendments to the Map purport to update the Map to be consistent with the language of the adopted ordinance.
 - C. The amendments to the Town’s Ordinance, as they relate to adoption of the statewide timber harvesting standards defer all administration and regulation of all forestry activities within the municipality to the Bureau of Forestry, are consistent with the minimum requirements of the Chapter 1000 Guidelines.
4. The Department's review of the amended Ordinance has revealed the following significant deficiencies:
- A. Section 12 Non-Conformance (C)(1)(c) & (d) fails to include the term “legally existing” when describing non-conforming structures.
 - B. Section 12 Non-Conformance (C)(1)(c)(ii) contains language that does not relate to the section that should be identifying the maximum height of a structure.
5. On August 24, 2017, the Town of Chelsea was notified by the Department of the above deficiencies, and the proposed conditional approval of the Ordinance.

BASED on the above Findings of Fact, the Commissioner makes the following CONCLUSION:

- 1. The deficiencies noted in paragraph 4 above can be addressed by the Commissioner approving the Ordinance with conditions. This will result in the Ordinance being substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.S.R., Section 438-A, and the minimum Guidelines.

THEREFORE, the Commissioner APPROVES the Ordinance, as amended on June 15, 2017, SUBJECT TO THE ATTACHED CONDITIONS:

- 1. Section 12 Non-Conformance (C)(1)(c) & (d), shall be amended as follows:
 - (c) Notwithstanding Section 12(C)(1)(b), if a ***legally existing*** nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable standards of this Ordinance are met and the expansion is not prohibited by Section 12(C)(1) above:

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(d) All other *legally existing* nonconforming principal and accessory structures that do not meet the water body, tributary stream or wetland setback requirements may be expanded or altered as follows, as long as other applicable standards of this Ordinance are met and the expansion is not prohibited by Section 12(C)(1) and subsections (a), (b) or (c) above:

2. Section 12 Non-Conformance (C)(1)(c)(ii), shall be amended as follows:

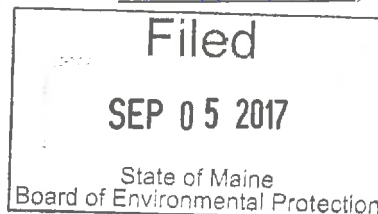
(ii) The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

~~(ii) 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, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.~~

DONE AND DATED AT AUGUSTA, MAINE, THIS 5TH DAY OF SEPTEMBER, 2017.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Paul Mercer*
 For: Paul Mercer, Commissioner



PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.



DEP INFORMATION SHEET

Appealing a Commissioner's Decision on a Shoreland Zoning Ordinance

Dated: September 2016

Contact: (207) 287-2452

SUMMARY

There are two methods available to a municipality seeking to appeal a shoreland zoning ordinance decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board), or (2) in a judicial process before Maine's Superior Court.

This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's General Laws, 38 Maine Revised Statutes (M.R.S.) § 438-A(3); & 38 M.R.S. § 341-D(4), and its Rules Concerning the Processing of Applications and Other Administrative Matters ("Chapter 2"), 06-096 C.M.R. ch. 2 (effective April 1, 2003).

APPEAL PERIOD TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. An appeal filed after 30 calendar days will be rejected.

SUBMITTING AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a shoreland zoning ordinance decision must also send the documents to the DEP's Commissioner. All the information listed in the next section must be submitted at the time that the appeal is filed. Evidence that is not in the DEP's record at the time of the decision may be offered as part of an appeal for consideration by the Board only as described at the end of the following section.

INCLUDE IN THE APPEAL PAPERWORK

The documents constituting an appeal must contain the following information at the time submitted:

1. Aggrieved Status. Standing to maintain an appeal requires the appellant to show they are submitting the appeal on behalf of the municipality subject to the Commissioner's decision and to show the municipality is particularly injured by the Commissioner's decision.

2. The findings, conclusions or conditions objected to or believed to be in error. Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. The remedy sought. This can range from reversal of the Commissioner's decision on the shoreland zoning ordinance to changes in specific conditions imposed on the shoreland zoning ordinance.
4. The basis of the objections or challenge. If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
5. All the matters to be contested. The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. Request for hearing. The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. New or additional evidence to be offered. The Board may allow new or additional evidence as part of an appeal only when the person seeking to supplement the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the ordinance review process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for new or additional evidence are found in Chapter 2, § 24(B)(5)

OTHER CONSIDERATIONS

1. Be familiar with all relevant material in the DEP record. A municipal shoreland zoning file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. Be familiar with the regulations and laws under which the shoreland zoning ordinance was processed, and the procedural rules governing your appeal. DEP staff will provide this information upon request and answer questions regarding applicable requirements.
3. The filing of an appeal does not operate as a stay to any decision. A municipality proceeding with shoreland zoning matters pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

AFTER A TIMELY APPEAL HAS BEEN FILED WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP shoreland zoning staff member assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as new or additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal a final Commissioner or Board decision to Maine's Superior Court, see 38 M.R.S. § 346(1); Chapter 2, § 28; 5 M.R.S. § 11001 *et seq.*; & M.R. Civ. P. 80C. Parties to the shoreland zoning ordinance decision must file a petition for review within 30 days

after receipt of notice of the Commissioner's or Board's decision. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal. The filing of an appeal or a petition for reconsideration to the Board is not a prerequisite for a judicial appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452, and for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
