

NOTE TO THE VOTER: Through the Maine Department of Environmental Protection Order #38-2023 that has been conditionally approved on 9/11/2023, the following changes are recommended to bring the Town of Fayette Land Use Ordinance into compliance with the provisions of 38 MRS §§ 435-448, the Mandatory Shoreland Zoning Act, and the Maine Department of Environmental Protection's Guidelines for Municipal Shoreland Zoning Ordinances, 06-096 C.M.R. ch 1000. Additions to the ordinance will be in red, and what must be removed shall be struck through.

Article 3.H.6 Making an Appeal:

The Board of Appeals shall decide all appeals within ~~45~~**35** days after the close of the hearing and shall issue a written decision on all appeals. The decision shall become part of the public record and shall include a statement of findings and conclusions as well as the reason or basis thereof, and the appropriate order, relief, or denial thereof. **The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.** All meetings shall be recorded, and copies of the recordings shall be available to the public at reasonable cost.

Article 3.3.C.4 Variance Appeals

For areas in the Protected Districts, a copy of each variance request, including the application and all supporting information supplied by the applicant shall be forwarded by the municipal officers to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Appeals Board. **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.**

Article 8.3.F Piers, Docks, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland

F. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. **A temporary pier, dock, or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.**

Article 8.14.C Clearing or Removal of Vegetation for Activities other than Timber Harvesting

At distances greater than one hundred 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and 100 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, cutting of trees and removal of vegetation is permitted for approved uses such as residential construction, accessory structures, driveways, underground wastewater systems and other approved structures and paths. **There shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.** ~~Timber Harvesting may be allowed as described in Section 14(A) and (B), above.~~

Article 9 Definitions:

Basal Area – the area of cross-section of a tree stem at the 4 ½ feet above ground level and inclusive of bark.

Outlet Stream - any perennial or intermittent stream, as shown on the most recent 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.

Stream - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent ~~edition,~~ highest resolution version of a the national hydrography dataset available from the United States Geological Survey ~~7.5 minute series topographic~~ on the website of the United States Geological Survey or the national map, or if not available, a ~~15 minute series topographic 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. **When a stream meets the shoreland zone of a water body or wetland within the shoreland area and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.**

Structure — anything **temporarily or permanently located**, built, **constructed, or erected** for the support, shelter or enclosure of persons, animals, goods or property of any kind, ~~together with~~ or anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. exclusive of subsurface wastewater disposal systems **as defined in Title 30-A, section 4201, subsection 5**, geothermal heat exchange wells **as defined in Title 32, section 4700-E, subsection 3-C**; or wells or water wells **as defined in Title 32, section 4700-E, subsection 8**, fences, and poles, wiring and other aerial equipment normally associated with service drops, as well as guying, **guy wires** and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, ~~but excluding personal residential TV satellite dishes.~~ Roads and driveways serving 2 lots or fewer shall be excluded provided the criteria of Article 8, Section M are met.

Water crossing - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. ~~This definition includes crossings for timber harvesting equipment and related activities.~~

The following recommended change is not mandatory, but aligns and simplifies our requirements around expansions of legal non-conforming structures in the shoreland zone. Maine DEP now considers evaluating height and footprint to be the standard.

ARTICLE 2.3.A.1.a-f

SECTION 3. LEGAL NON-CONFORMING STRUCTURES

A. Expansion. A legal non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs ~~1(a), (b), (c), (d), (e), and (f)~~, **1.a-f** below:

1. Legally existing non-conforming principal and accessory structures that do not meet the current water body, tributary stream or wetland setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Ordinance are met:
 - a. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream or upland edge of a wetland is prohibited, even if the expansion will not increase non-conformity with the water body, tributary stream, or wetland setback requirement.
 - b. Expansion of an *accessory structure* that is located closer to the *normal high-water line* of a water body, tributary stream, or upland edge of a wetland than the *principal structure* is prohibited, even if the expansion will not increase non-conformity with the water body, tributary stream, or wetland *setback* requirement.
 - c. For structures located between 25 and 75 feet, horizontal distance, from the *normal high-water line* of a water body, tributary stream, or upland edge of a wetland, the maximum combined-total ~~floor area for all portions of those structures is 1,000 square feet,~~ **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.** ~~and~~ The maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater.
 - d. For structures located between 75 and 100 feet, horizontal distance, from the *normal high-water line* of a water body, tributary stream, or upland edge of a wetland, the maximum combined total

~~floor area~~ for all portions of those structures within that 75 and 100 feet distance is 1,500 square feet, and **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 portion of a structure that is within 75 and 100 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the *floor area* and height limits of paragraph A.1.c, above.

- e. ~~For the purpose of Section 3A (1) above, a *basement* is not counted toward *floor area*.~~
An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.
- f. See definition of *Increase in Nonconformity of a Structure*.