

Article 8 - Shoreland Overlay District

(Proposed Ordinance changes that exceed minimum guidelines in York)

The purpose of this Amendment is to modify Article 8, Shoreland Overlay District, to correspond with newly enacted (January 26, 2015) State Chapter 1000, Guidelines For Municipal Shoreland Zoning Ordinances. The Town is required under the **Mandatory Shoreland Zoning Act, 38 M.R.S.A., sections 435-448**, to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined.

The **Mandatory Shoreland Zoning Act** was enacted by the Legislature in 1971. Guidelines were established by the State of Maine in 1990, adopted in York in 1992, and are Amended as required by law. **Included in this document are five changes to *Article Eight – Shoreland Overlay District* submitted for adoption that meet or exceed State mandate: 8.2.1; 8.3.3.2; 8.3.6.9; 8.3.6.11; 8.3.11.4.**

(Other changes, such as definitions, etc, are 'highlighted' in the new copy of Article 8.)

Mandatory Shoreland Zoning Act

Background

The **Mandatory** Shoreland Zoning Act was enacted by the Legislature in 1971. The Town is required under 38M.S.R.A. § § 435-448, to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined.

What is the intent of the law? Reference: York Town Ordinance 1.3.3

The purposes of the Shoreland Overlay District are: to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas. Amended 05/09/92

The state's primary role, through the Department of Environmental Protection, is to provide technical assistance in the adoption, administration, and enforcement of these local ordinances. **If a municipality has not adopted its own shoreland zoning ordinance, the state will adopt the model ordinance for that municipality. Of the more than 450 municipalities with shoreland zoning ordinances, approximately 60 currently have "state-imposed" ordinances.**

8.2.1 Timber Harvesting and Land Management Road *in the Shoreland Overlay District* **(1 of 2)**

Current Town Ordinance

8.2.1 A-D found on pages 142 through 150 of the Zoning Ordinance...

DEP Mandate

Title 38 M.R.S.A. section 438A provides that, notwithstanding other provisions of the *Mandatory Shoreland Zoning Act*, the **regulation of timber harvesting and timber harvesting activities in the shoreland areas must be in accordance with section 438B and rules adopted by the Maine Forest Bureau pursuant to Title 12, section 8867B.** Section 438B establishes three options from which each municipality may choose as the State implements a set of statewide timber harvesting standards in the shoreland areas.

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8.2.1 Timber Harvesting and Land Management Road in the Shoreland Overlay District (2 of 2)

Proposed Town Ordinance

Notification to the CEO after review and approval from the Maine Bureau of Forestry.

Under this option the Bureau of Forestry will administer the regulation of all forestry activities within the municipality. The Committee recommends this option at the request of the Shoreland Resource Officer for ease of compliance and application of the requirement.

8.3.3.2 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting (1 of 2)

Current Town Ordinance

Except in areas as described in § 8.3.3.1, above, and except to allow for the development of permitted uses, a buffer strip of vegetation shall be preserved within a strip of land extending: 100 feet, horizontal distance, inland from the normal high-water mark of a great pond; 100 feet, horizontal distance, from the normal high water mark of the tidal waters or upland edge of coastal wetlands along the York River and its tributaries; or 75 feet, horizontal distance, from any other waterbody or the upland edge of a wetland. The following standards shall apply:

Proposed Town Ordinance

Except in areas as described in § 8.3.3.1, above, and except to allow for the development of permitted uses, a buffer strip of vegetation shall be preserved within a strip of land extending: 100 feet, horizontal distance, inland from the normal high-water mark of a great pond; 100 feet, horizontal distance, from the normal high water mark of the tidal waters or upland edge of coastal wetlands along the York River, *Cape Neddick River, Brave Boat Harbor* and their tributaries or 75 feet, horizontal distance, from any other waterbody or the upland edge of a wetland. The following standards shall apply:

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8.3.3.2 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting (2 of 2)

The Cape Neddick River and Brave Boat Harbor were added in order to afford the same protection at the same level as the York River.

Reference: York Comp Plan Vol. 1, 5.2.1

The Town has learned through 15 years of water quality testing in the lower Cape Neddick River that there is a significant water pollution problem. Clean water in the Cape Neddick River is a goal of the Town because it is important for public health, environmental health, the quality of life of York residents, and the Town's tourist economy. It is also directly related to the Town's established goal to ensure high water quality at public beaches, including Cape Neddick Beach (see Policy #5.2.5). A key determinant of water quality is the health and adequacy of riparian vegetative buffers. Providing good quality riparian vegetative buffers is a prime means to ensure: stability of the river banks; maintenance or improvement of water quality; conservation of fish and wildlife habitat; and protection of aesthetic values. Two critical steps for improving water quality in the River are to protect remaining buffers, and to re-establish lost buffers where feasible. State minimum shoreland standards have not proven adequate, so larger buffer requirements must be established and enforced. IMMEDIATE PRIORITY - PLANNING BOARD TAKES LEAD ROLE

8.3.6.9 Piers, Docks, Wharves

Current Town Ordinance

- Along the York River a pier may be built only on a tract of land with river frontage existing as of March 5, 1977, provided that there is no pier presently on the land and the following requirements are met:

Proposed Town Ordinance

- A pier may be built only on a tract of land with river frontage on the York River existing as of March 5, 1977; and only on a tract of land with river frontage on the *Cape Neddick River or shore frontage on Brave Boat Harbor existing as of May, 2017*, provided that there is no pier presently on the land and the following requirements are met:

8.3.6.11 Piers, Docks, Wharves

DEP Mandate

No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a body of water or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.

Proposed Town Ordinance

No more than one pier, dock, wharf or similar structure extending or located beyond the normal high-water line of a water body or within a wetland is allowed on a single lot.

*The recommendation of the Harbor Board is to change the number of allowed piers and docks on an oversized lot from **two** to **one**.*

8.3.11.4 Expansion of Structures That Do Not Comply With Setback Requirements (1 of 3)

Current Town Ordinance

- (a) Expansion of the nonconforming portion of the structure is limited as follows: total expansion of the nonconforming portion cannot exceed 30% of the floor area or building volume of the nonconforming portion of the structure as it existed as of Jan. 1, 1989. Basements which have a ceiling height of greater than 6 feet and a solid non-earthen floor shall be considered in calculating the permitted amount of floor area and volume expansion. No accessory structure shall be included in the calculation of existing floor area or building volume calculations. In the event that the principal structure is destroyed or removed by any means, the Code Enforcement Officer shall determine the base floor area and volume of that structure using the measurements shown on a prior building permit, property tax card, or the most reasonable record available.

8.3.11.4 Expansion of Structures That Do Not Comply With Setback Requirements (2 of 3)

DEP Mandate

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

- (b) Notwithstanding paragraph (a), above, 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, or upland edge of a wetland , that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12C(1).
- (i) 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 Jan. 1, 1989, whichever is greater. The maximum height of the principal structure mat not be made greater than 15 feet or the height of the existing structure, whichever is greater.

8.3.11.4 Expansion of Structures That Do Not Comply With Setback Requirements (3 of 3)

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

The Committee recommends against any expansion of structures within the 25 foot zone due to York's unique vulnerability to storm surge damage.