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REPORT TO THE FIRST REGULAR SESSION
OF THE
ONE HUNDRED TWENTY-FIRST LEGISLATURE

PERTAINING TO THE IMPLEMENTATION
OF THE
OPTIONAL EXPANSION LIMITATION
IN THE
SHORELAND ZONE

PURSUANT TO PUBLIC LAW CHAPTER 748 SECTION 7 (1998)

Submitted by the:

Department of Environmental Protection
Bureau of Land and Water Quality
Division of Land Resource Regulation
Shoreland Zoning Unit

January 15, 2003

MEMORANDUM

TO: The Honorable Senator John Martin
The Honorable Representative Theodore Koffman
Joint Standing Committee on Natural Resources

FROM: Brooke Barnes, Acting Commissioner, Department of Environmental
Protection

DATE: January 15, 2003

SUBJECT: Report Pertaining to the Implementation of the Optional Expansion
Limitation in the Shoreland Zone

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I am pleased to submit the Department of Environmental Protection's report on the municipal implementation of the optional method of limiting expansions of shoreland structures that are located less than the required setback from the water. This option was incorporated into the Mandatory Shoreland Zoning Act in 1998 after it was proposed by a stakeholders group established as a result the enactment of Chapter 746.

The Department has concluded that the new municipal option is a sound and viable measure. We would be pleased to discuss the contents of this report with the Committee, at your convenience.

Introduction

The Mandatory Shoreland Zoning Act (Act), Title 38 MRSA section 435-449, requires all organized municipalities in the State of Maine to adopt shoreland zoning ordinances that regulate land-use activities within 250 feet of great ponds, rivers, tidal waters, and freshwater and coastal wetlands, as well as within 75 feet of certain streams. The Act also limits the size of expansions of structures that do not meet the water-setback requirement. Since January 1, 1989, such structures are limited to an expansion in floor area and volume of less than thirty percent. Section 439-A.4 of the Act states:

Notwithstanding any provision in a local ordinance to the contrary, 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 setback requirements approved by the board (Board of Environmental Protection), except functionally water-dependent uses. For the purposes of this subsection, a substantial expansion of a building is an expansion that increases either the volume ^{or} of floor area by 30% or more.

The Department considers Section 439-A.4 to apply to the lifetime of the structure, and to that portion of the structure that is less than the required setback from the water. In the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Guidelines), both "floor area" and "volume" are defined.

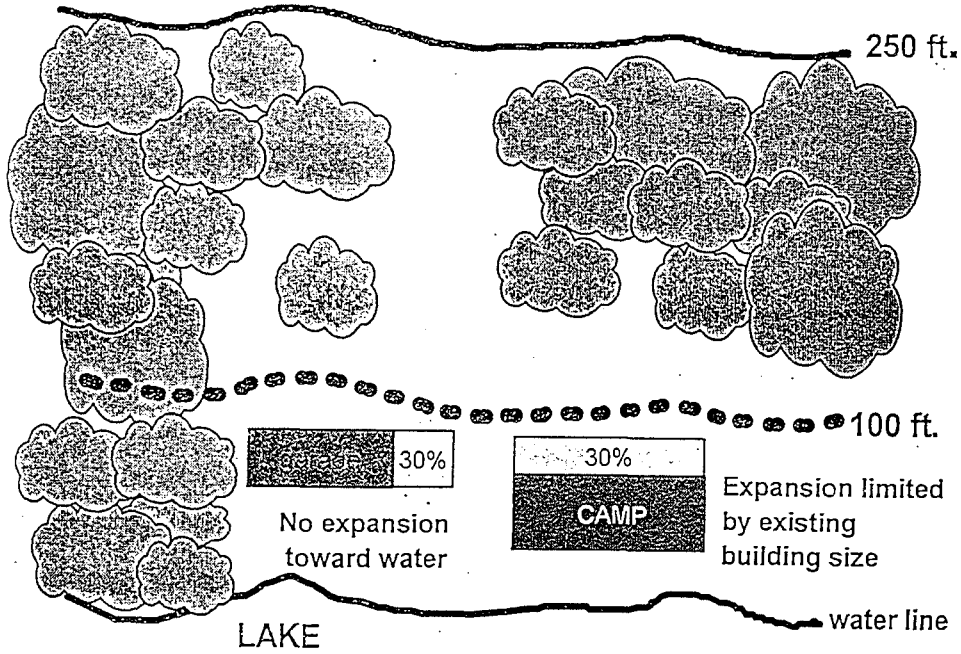
Over the years following its implementation, the Department received many comments regarding the 30% rule. Some felt that the 30% rule favored those with larger structures. Thirty percent of a large structure can be significantly more than thirty percent of a small one. Thus, the owner of a large structure close to the water can expand more than the owner of a smaller camp located further from the water. This is perceived by some to be unfair and environmentally unsound.

Others commented that volume calculations that must be done as part of the 30% expansion limitation can be complicated, especially with odd-shaped structures, and when the setback line passes through the structure. Furthermore, the Department became very much aware of the need for municipalities to track expansions over time. Whereas, the 30% limitation became effective on January 1, 1989, and applies to the lifetime of the structure, the town must document the amount of any expansion that has occurred, and know when further expansion is prohibited. Only through good records can this be accomplished. Yet, many municipalities do not adequately maintain the necessary records.

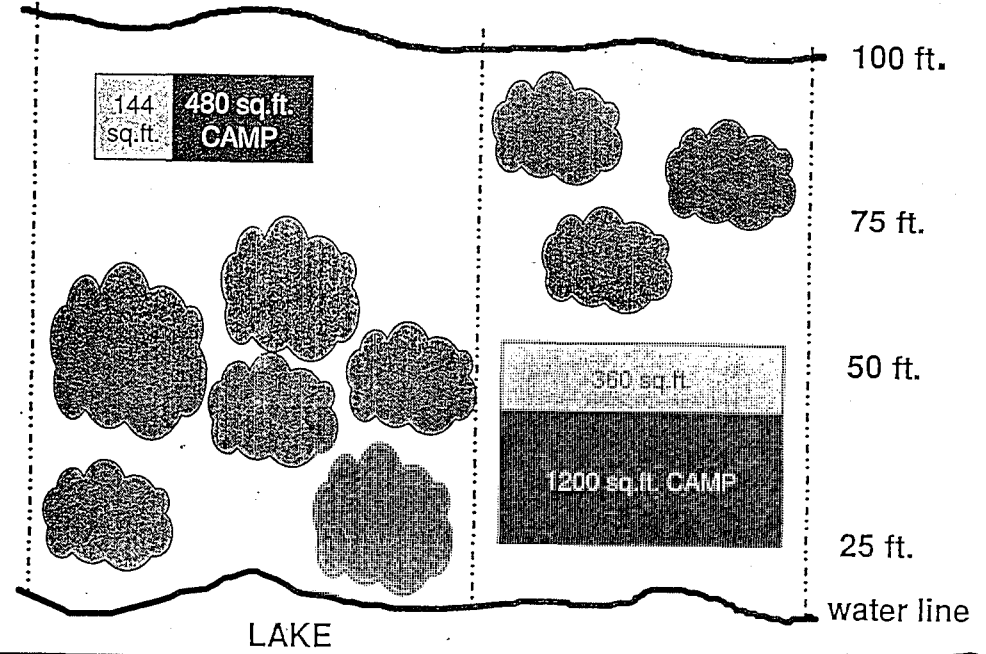
Enactment of an Optional Expansion Limitation Method

In 1997, the 118th Legislature enacted An Act to Clarify and Amend the Storm Water Management Laws. This law required the Department to study and report on: whether approval of an expansion of a nonconforming structure in the shoreland zone should be made contingent upon a reduction in the total nonpoint source pollution from the lot, and

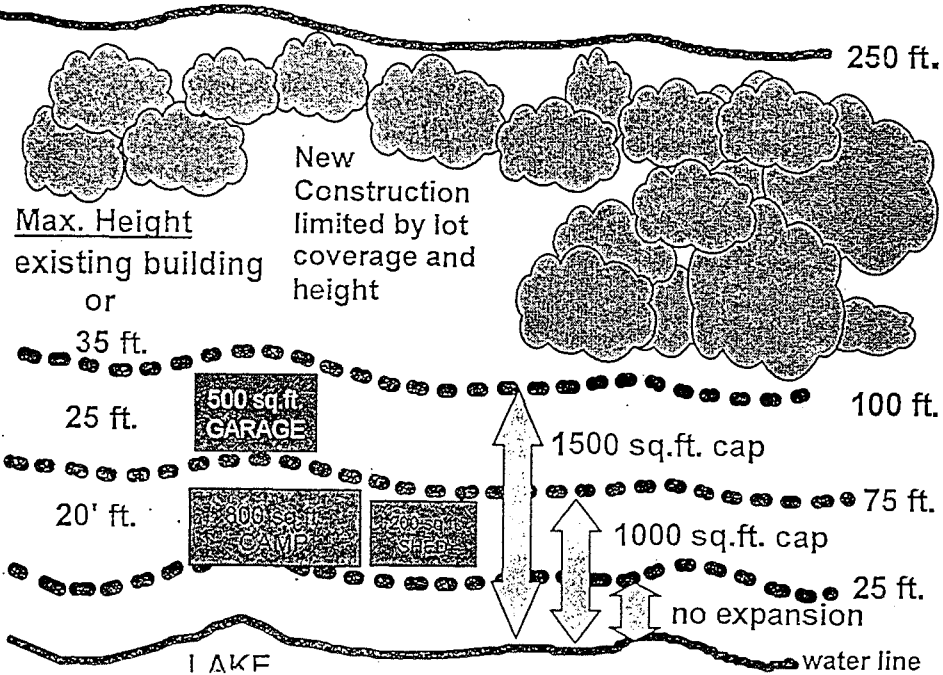
CURRENT 30 PERCENT EXPANSION RULE



EQUITY ISSUE pertaining to 30% Rule



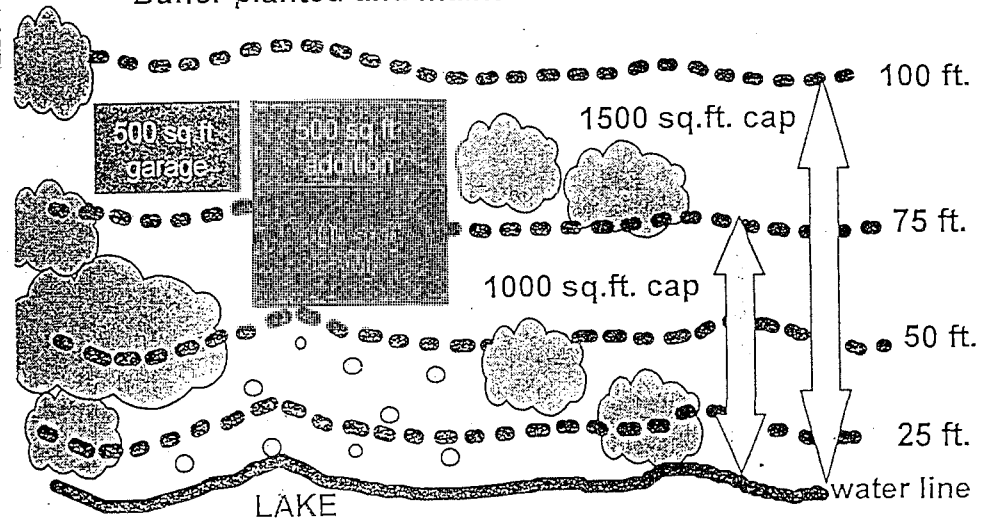
EXPANSION OPTION



SPECIAL EXPANSION ALLOWANCE

Up to 500 sq.ft. above cap allowed provided:

- Camp greater than 50 ft. from shore, and
- Buffer planted and maintained within 50 ft.



whether the 30% rule should be amended to improve the equity of its application. The Department convened a "stake-holders" group to address its legislative mandate. The group was successful in developing an alternative that was presented to the Legislature for consideration.

In 1998, Public Law Chapter 748, An Act to Reduce Nonpoint Source Pollution from Existing Sources, Amend the Shoreland Zoning Laws and Amend the Site Location of Development Laws, was enacted. This law provided an optional method for municipalities to regulate expansions of nonconforming structures to reduce the impact of those structures on water quality and storm water run-off.

Chapter 748 allows a municipality to limit expansions based on a structure's total floor area and height, rather than a 30% expansion based on floor area and volume. A copy of the full text of the amendment is found in Appendix A. Chapter 748 also requires the Department to report to the Committee on Natural Resources by January 15, 2003 on the implementation of the optional expansion limitation provisions. The report must evaluate the use of and compliance with the alternative expansion provisions and evaluate the environmental benefit of the provisions in comparison with the 30% expansion limitation.

Implementation, Results and Conclusions

Following enactment of Chapter 748 the Department amended its Guidelines (February 6, 1999) to include the optional alternative to the 30% expansion limitation. Subsequently, Department staff used mailings, workshops, and code enforcement officer training programs to publicize the optional expansion limitation that was available to the municipalities.

In the four years since the Department's Guidelines were amended to include the optional expansion limitation, thirty-six (36) municipalities have adopted it. One town, Brunswick, adopted the alternative to the 30% rule but has since reverted to the 30% rule because the new rule proved to be too limiting to many home owners in that town's shoreland zone. The City of Bath chose to regulate most of its shoreland zone pursuant to the new option, but has kept a small portion of its shoreline under the 30% expansion limitation. Thus, 34 municipalities of the state's approximately 450 cities and towns subject to the Shoreland Zoning Law have adopted the optional expansion provisions for all of their shoreland areas. A list of the towns that have enacted the alternative expansion provisions is found in Appendix B.

The Department has spoken with municipal officials from more than 75% of the municipalities that have incorporated the alternative expansion provisions. Based on those conversations, the Department has determined that the alternative has worked well in nearly all of those towns that have adopted it. Code enforcement officers are extremely pleased with the change. They have found it to be fair and much easier to administer and enforce. They no longer have to keep close track of the dates and sizes of past expansions, since the limit is based on a specific amount of total floor area and building

height rather than a percentage based on the structure size at a certain time in the past. Furthermore, complicated volume calculations are no longer necessary.

Numerous officials have also noted that the alternative system is more beneficial to small camp owners. Those owners, provided their structure extends at least 25 feet from the water body, can expand to at least 1000 square feet in total area. Thus, nearly every camp owner can have a structure of a reasonable size, regardless of its original dimensions. Under the 30% rule, a 500 square foot camp can be expanded by only 150 square feet. However, pursuant to the alternative rule, that camp may be expanded up to a total of 1000 square feet.

Code officers have noted that some structure owners have been prohibited from expanding because their structures already exceed the floor area or height limitations contained in the new option. However, most town officials recognize that the limitations in the new option fairly limit larger nonconforming structures from further expansion within the "buffer" area. This limitation benefits water quality and the natural beauty of the shoreline.

The section of the new option that was specifically designed to address non-point source pollution (NPS) was adopted by fourteen (14) of the thirty-six (36) municipalities that chose the alternative expansion limitation. Those 14 municipalities adopted the provisions allowing for a special expansion of 500 square feet if certain stormwater run-off control measures are taken. Measures include vegetative plantings, increasing structure setbacks, and addressing run-off from roofs and driveways. In the fourteen towns that have included the "bonus" 500 square feet expansion provision only two special expansion applications have been granted. One has been allowed in the town of Belgrade and one has been granted in Brunswick. Brunswick has since reverted to the standard 30% expansion limitation. In the spring of 2003, Department staff plan to visit these two sites in Belgrade and Brunswick to determine how well the buffer plantings are being maintained.

Based on experience with the optional expansion limitation, the Department has concluded that it is a viable option for municipalities that wish to adopt it. Although it has not been enacted by a large number of municipalities, its provisions are sound. The option provides a fair method of limiting expansions, while also providing municipal officials with a less complicated administrative process.

The "special expansion allowance", permitting an extra 500 square feet of floor area, provides an incentive for owners of nonconforming structures to establish improved vegetative buffers, and to mitigate stormwater run-off. It also includes an incentive for landowners with a structure less than 50 feet from the setback requirement to voluntarily relocate the structure further from the water.

In conclusion, the Department will continue to work with municipalities that wish to incorporate the expansion limitation alternative into their respective ordinances.

Appendix A

Mandatory Shoreland Zoning Act Title 39 MRSA section 439-A.4-A

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4-A. Alternative expansion requirement. Notwithstanding subsection 4, a municipality may adopt an ordinance pursuant to this subsection that permits expansions of principal and accessory structures that do not meet the water setback requirements approved by the Board of Environmental Protection if the ordinance is no less restrictive than the requirements in this subsection.

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

C. Legally existing nonconforming principal and accessory structures that do not meet the water 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 floor area for all structures is 1000 square feet, and the maximum height of any structure is 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 floor area for all structures is 1,500 square feet, and the maximum height of any structure 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 from the normal high-water line or upland edge of a wetland must meet the floor area and height limits in subparagraph (1).

Existing principal and accessory structures that exceed the floor area or height limits under this paragraph may not be expanded, except as provided in paragraph E.

For the purposes of this paragraph, a basement is not counted toward floor area.

D. When a basement is added to an existing structure or when a basement is constructed as part of a reconstruction or replacement structure, the structure and the basement must be placed so that the setback is met to the greatest practical extent, as determined by the municipal planning board or, if authorized by the municipal planning board, the certified code enforcement officer.

E. A municipality may permit an expansion that causes the maximum floor area limits established in paragraph C to be exceeded by not more than 500 square feet if:

(1) The principal structure is set back at least 50 feet from the normal high-water line of a water body or upland edge of a wetland;

(2) An existing well-distributed stand of trees and other vegetation, as defined in the minimum guidelines adopted by the Board of Environmental Protection, extends at least 50 feet inland from the normal high-water line or upland edge of a wetland for the entire width of the property or, if such a stand is not present, a written plan by the property owner to reestablish a buffer of native trees, shrubs, and other ground cover within 50 feet of the normal high-water line or upland edge of a wetland is approved by the municipal planning board. The plan must be implemented at the time of construction and must be designed to meet the minimum guidelines adopted by the Board of Environmental Protection as the vegetation matures. Rules adopted pursuant to this subparagraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A; and

(3) The municipal planning board approves a written mitigation plan. The plan must be developed, implemented and maintained by the property owner. A mitigation plan must provide for the following mitigation measures.

(a) Unstabilized areas resulting in soil erosion must be mulched, seeded or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies and wetlands.

(b) Roofs and associated drainage systems, driveways, parking areas and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron or similar device.

The written plans required pursuant to subparagraphs 2 and 3 must be filed in the registry of deeds of the county in which the property is located.

A copy of all permits issued pursuant to this paragraph must be forwarded by the municipality to the department within 14 days of the issuance of the permit.

Appendix B

Municipalities Adopting the Alternative to the 30% Expansion Rule For Nonconforming Structures in the Shoreland Zone

Baileyville
Bath♣
Belgrade*
Bradley
Brunswick* #
Bucksport
Buxton
Canaan
Clifton*
Danforth
Dover-Foxcroft
Eastbrook*
Eddington*
Ellsworth
Fayette*
Fort Fairfield*
Friendship
Hudson
Linneus
Monson
Moscow*
Owls Head
Peru
Poland*
Readfield
Ripley*
Rome
Searsport
Skowhegan*
Solon
Stockton Springs*
Turner*
Van Buren
Vienna
Wayne*
Westmanland

Total: 36

- * Have included the 500 square feet "special expansion allowance"
- # Adopted alternative, but later repealed it in favor of the 30% rule
- ♣ Only applies to a portion of the town

PL 1997, CHAPTER 748

H.P. 1635 - L.D. 2265

**An Act to Reduce Nonpoint Source Pollution from Existing Sources, Amend
the Shoreland Zoning Laws and Amend the Site Location of Development
Laws**

Sec. 7. Report; shoreland zoning. By January 15, 2003, the Department of Environmental Protection shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters regarding compliance with the Maine Revised Statutes, Title 38, section 439-A, subsection 4-A. The report must evaluate use of and compliance with the alternative expansion provisions of that subsection and evaluate the environmental benefit of the provisions in comparison with the measures permissible under Title 38, section 439-A, subsection 4.