

SECTION II: GENERAL REGULATIONS AND STANDARDS

A. General Regulations

1. Any structure or property in the Town devoted to a lawful use at the time of adoption of this Ordinance may continue in such use until abandoned.
2. After the date of adoption of this Ordinance, all buildings, structures, land or parts thereof shall be erected, constructed, expanded moved or structurally altered in conformance with the land use, structure and performance standards herein specified for the zone in which they are located. All new lots shall be created in conformance with the lot size, structure, and performance standards herein specified for the zone in which they are located. This ordinance also applies to all land areas within 250 feet, horizontal distance of the:
 - a) Normal high-water line of any great pond or river
 - b) Upland edge of a coastal wetland, including all areas affected by tidal action, or
 - c) Upland edge of a freshwater wetland and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

And to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

3. Normal repairs and maintenance do not need a permit from the Town as long as they do not involve expansion of a structure or use, or a change in use. This ordinance allows, without a permit the normal upkeep and maintenance of non-conforming uses and structures, including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state or local building and safety codes may require.
4. Each subdivision requires approval by the Planning Board in accordance with provisions of this ordinance and of the "Subdivision Ordinance of the Town of "Southwest Harbor". A building permit may be approved simultaneously for construction within the first year of subdivision approval.
5. No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in a shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate Town Officials. Following installation of service, the company/district shall forward the written authorization to the Town, indicating that the installation has been completed.
6. Should any section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.
7. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.
8. To be enforceable, this Ordinance must have been adopted by the Town of Southwest Harbor's legislative body and approved by the Commissioner of the Department of Environmental Protection.
9. The Code Enforcement Officer shall determine whether the property is in compliance with any applicable Ordinance and any previously issued permit. Any property deemed "not in compliance" shall not be issued any new permit until such time as the Code Enforcement Officer shall certify the property is in compliance.

B. GENERAL STANDARDS

1. STRUCTURE

a. Definition

The term structure is defined as anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks, patios, balconies, piers, dumpsters, and satellite dishes; but excludes incidental structures for residential use, such as picnic tables, chairs, birdhouses, flagpoles.

b. Setbacks

- 1) The structure setback standards for driveways, parking areas, roads, and signs are detailed in the following sections of the Ordinance:
 - Driveways.....page 25
 - Parking areas.....page 28
 - Roads.....page 31
 - Signs.....page 34
- 2) Any setback measurements from the normal high-water line of and water body, stream, tributary stream or the upland edge of a wetland are horizontal distances.
- 3) The water body, tributary stream or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- 4) Stairways or similar structures may be allowed within the water or wetland setback area with a permit from the Code Enforcement Officer to provide shoreline access in areas of steep slopes or unstable soils provided:
 - a) The structure is limited to a maximum of Four Feet (4') in width;
 - b) The structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, unless permitted by DEP pursuant to the Natural Resources Protection Act (NRPA), M. R. S.A. 38 § 480-Cet seq, and
 - c) The applicant demonstrates that no reasonable access alternative exists on the property.

c. Structures and uses

- 1) If more than one structure or use, or combination thereof, is constructed, established or placed on a single parcel in common ownership, all structure standards shall be met for each structure or use except in shore land zones which shall include minimum lot area per dwelling unit or use.
- 2) Dimensional requirements are specified within the structure standards for multi-family development.
- 3) For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at their expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination.

If agreement is still not reached, the applicant may appeal the matter to the board of appeals.

- d. Minimum residential floor space in all zones is Five Hundred (500) sq. ft.
- e. Flood hazard regulations
All openings or the equivalent to the first lowest floor elevation of all new construction or substantial improvement to existing buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood. (See Southwest Harbor's Floodplain Ordinance).
- f. Retaining Walls
Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
 - (1) The site has been previously altered and an effective vegetated buffer does not exist;
 - (2) The wall(s) is (are) at least Twenty Five feet (25) from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - (3) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - (4) The total height of the wall(s), in the aggregate, is no more than 24";
 - (5) Retaining walls are located outside of the One Hundred (100)-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
 - (6) The area behind the wall is re-vegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
 - (7) A vegetated buffer area is established within Twenty Five feet (25) of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of storm water runoff;
 - (iii) Only native species may be used to establish the buffer area;
 - (iv) A minimum buffer width of Fifteen feet (15) is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - (v) A footpath not to exceed the standards in Section VI (B) may traverse the buffer;

NOTE: If the wall and associated soil disturbance occurs within Seventy Five feet (75) of a water body, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

2. LOTS

- a. Minimum lot area
 - 1) Land below the normal high-water line of a water body or upland edge of a wetland shall not be included toward calculating minimum lot area.
 - 2) Land beneath rights-of-ways providing access to the lots of the proposed subdivision

or any subdivisions approved after 5/3/88 shall not be included in calculating minimum lot area.

- 3) Land beneath roads serving more than two lots in Shoreland Zones and in Zone A within One Hundred-Fifty feet (150') of the NHL shall not be included toward calculating minimum lot area.

b. Shore frontage

- 1) The minimum width of any portion of any lot within One Hundred feet (100) of the normal high-water of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- 2) Shore frontage is measured in a straight line between the intersections of the lot lines with the shoreline.

c. Separate tracts or parcels of land:

Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971, or unless one or more of the lots within the Harbor, Commercial Fishery/Maritime Activity, Maritime Activity or the Residential Shoreland zones, or 250' of any freshwater wetlands, are non-conforming and the parcels were described as one lot on the recorded deed at the time of adoption of this Ordinance.

d. Lot coverage

The calculation of lot coverage in the Shoreland Zones and within 250' of the normal high-water line of Zone A shall include all non-vegetated surfaces in addition to buildings. In the other zones, lot coverage includes only buildings.

3. ROADS AND DRIVEWAYS

The Planning Board may require a traffic impact analysis report by a registered professional engineer to show that (1) the roads giving access to the development and (2) the neighboring roads have adequate carrying capacity to accommodate the amount and types of traffic to be generated by the proposed use.

SECTION III: NON-CONFORMANCE

A. PURPOSE

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance (June 29th, 1992) shall be allowed to continue, subject to the requirements set forth in this Section III. Except, as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

B. GENERAL

1. TRANSFER OF OWNERSHIP

Non-conforming lots, roads, driveways, structures, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming lot, road, driveway or structure, subject to the provisions of this Ordinance.

2. REPAIR AND MAINTENANCE

This Ordinance allows, without a permit pursuant to this Ordinance, the normal upkeep and maintenance of non-conforming roads, driveways, structures and uses including repairs or renovations that do not involve expansion of any part of the non-conforming use or structure.

3. MANDATED CHANGES

Any change in a non-conforming use or structure which does not comply with the provisions of this Ordinance, but which is mandated by Federal, State, or local building and safety codes shall be allowed with a permit.

C. NON-CONFORMING STRUCTURES

1. EXPANSIONS

- a. Any addition to or expansion of a non-conforming structure must conform to the standards of this Ordinance, unless a variance is obtained from the Board of Appeals. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

EXCEPTIONS:

- 1) Single family residential structures in all zones and commercial structures in Zone A except any structure or portion within 75' of the normal high-water line may be added to or expanded:
 - (a) If there is no change outside the existing footprint of any non-conforming portion of the structure as it existed on the face of the earth on May 3rd, 1988, and
 - (b) The increase in height of any non-conforming part of the structure is no greater than 12' during the lifetime of the building and no higher than the maximum elevation standard for the zone.
- 2) After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded as measured in floor area or volume by thirty (30%) or more during the lifetime of the structure. No expansion is allowed towards the shore line. If the replacement structure conforms with the requirements of Section (C)(3), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded to 30% in floor area and volume since that date. (5-4-10)