

Amendment to the Town of Island Falls Shoreland Zoning Ordinance As revised November 18, 2020

Purpose: To change the Limited Commercial District along the Mattawamkeag River downstream from the Route 2 intersection and a portion of the Limited Residential District surrounding the outfall of Sly Brook, to a General Development District. This change expands the permissible development of the area to include recreational activities. Specific intent is to develop the island and river area for recreational public use (picnicking, walking trails, canoeing/kayaking. Etc.). This modification complies with M.R.S.A. title 38, subsections 438-A(1) and 439-A.

The subject area is currently zoned as Limited Commercial District and includes the following properties or portions of properties that lie within 250 feet of the Mattawamkeag River:

Map 002 – Lot 002 - 005, 136, 140 - 142
Map 003 – 024 - 026, 028A

The subject area is currently zoned as Limited Residential District and includes the following properties or portions of properties that lie within 250 feet of the Mattawamkeag River, incl the Island:

Map 003 – 011, 011B, 027
Map 021 – Lot 001, 002

Exemption from setback requirements for decks over rivers within a downtown revitalization project.

- A. This revision exempts a deck from the otherwise applicable water or wetland setbacks if the following requirements are met:
 - (1) The deck does not exceed 700 square feet in area
 - (2) The deck is cantilevered over a segment of a river that is located within the boundaries of a downtown revitalization project
 - (3) The deck is attached to or accessory to a use in a structure that was constructed prior to 1971 and is located within a downtown revitalization project

- B. A downtown revitalization project under this revision must be defined in a project plan approved by the Town Selectmen and may include the revitalization of buildings formerly used as mills.

- C. Except for the water and wetland setback requirements, a deck that meets the requirements of this revision must meet all other state and local permit requirements and comply with all other applicable rules.

- D. A deck exempt under this subsection may be either privately or publicly owned or maintained.

Exemption from setback requirements for pedestrian walkways, trails, and bridges over rivers within a downtown revitalization project.

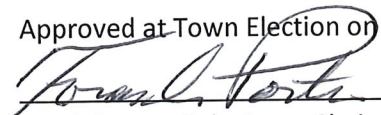
- A. This revision exempts pedestrian walkways, trails, and bridges from the otherwise applicable water or wetland setbacks if the following requirements are met:
 - (1) The walkway, trail, or bridge is adjacent to a segment of a river that is located within the boundaries of a downtown revitalization project
 - (2) If cantilevered over a segment of river, the walkway or trail does not extend over the river more than 10 feet from the normal high-water line
 - (3) If cantilevered over a segment of river, the walkway or trail is attached to a structure that was constructed prior to 1971 and is located within a downtown revitalization project
 - (4) If the walkway or trail is cantilevered over a segment of river, the municipal planning board has determined there is no other practical means to construct the walkway or trail without cantilevering over that segment of the river. If there are no other practical means to construct the walkway or trail, approaches to the cantilevered walkway or trail may also cantilever off adjacent retaining walls but no more than is necessary to access the cantilevered walkway or trail
 - (5) Pedestrian bridges constructed as part an approved trail must comply with all other applicable standards

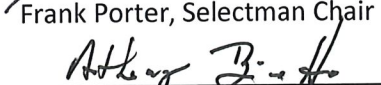
- B. A downtown revitalization project under this revision must be defined in a project plan approved by the Town Selectmen.

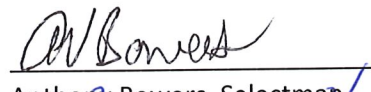
- C. Except for the water and wetland setback requirements, a walkway, trail, or bridge that meets the requirements of this revision must meet all other state and local permit requirements and comply with other applicable rules.

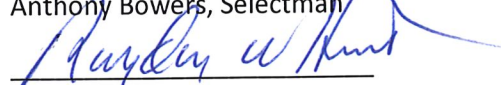
- D. A walkway, trail, or bridge exempt under this revision may be either privately or publicly owned or maintained.

Approved at Town Election on March 17, 2021.


Frank Porter, Selectman Chair



Anthony Binotto, Selectman


Anthony Bowers, Selectman


Royden Hunt, Selectman

James Lord, Selectman

Certified this 12th day of May, 2021 by the undersigned Municipal Officers of the Town of Island Falls to Kelly Ripley, Town Clerk.





JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Melanie Loyzim
COMMISSIONER

July 6, 2021

Town of Island Falls
Jutta Beyer, Town Manager
68 Houlton Rd
PO Box 100
Island Falls, ME 04747

Subject: Approval of Amendments to the Shoreland Zoning Ordinance

Dear Ms. Beyer:

On June 9, 2021, the Department of Environmental Protection received the March 17, 2021 amendments to the Town of Island Falls Shoreland Zoning Ordinance (Ordinance). The amendments to the Shoreland Zoning Ordinance are consistent with the requirements of the *Mandatory Shoreland Zoning Act*, 38 MRSA, Section 438-A(1) and the *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 C.M.R. Chapter 1000. Therefore, the Department approves the amendments as adopted.

Should you or the other town officials have any questions, please don't hesitate to contact me at (207) 356-8318, dawn.m.hurd@maine.gov, or by mail at the Bangor address below.

Sincerely,

Dawn M. Hurd
Maine Department of Environmental Protection
Assistant Shoreland Zoning Coordinator

enclosed: Department Order #20-2021

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF ISLAND FALLS) MANDATORY SHORELAND ZONING ACT
AROOSTOOK COUNTY)
SHORELAND ZONING ORDINANCE & MAP)
ORDER #20-2021) APPROVAL

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 Island Falls Shoreland Zoning Ordinance (Ordinance) and Shoreland Zoning Map (Map) as amended on March 17, 2021, 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 June 9, 2021, the Town of Island Falls submitted Ordinance and Map amendments adopted on March 17, 2021 to the Department for review:
 - A. The amendments make changes to the Town’s General Develop District to include lots in the Limited Commercial District: Map 002-Lot 002-005, 136, 140-142; Map 003-Lot 024-026, 028A and lots in the Limited Residential District: Map 003-Lot 011, 011B, 027; Map 021-Lot 001,002.
 - B. The amendments to the Town’s Map, were made to reflect the changes to the General Development District.
4. The Department’s review of the submitted amendments determined that they are consistent with the Act and the Guidelines. While consistent, further amendment of the Ordinance remains needed for the Ordinance to be fully up-to-date with the Guidelines.

TOWN OF ISLAND FALLS) MANDATORY SHORELAND ZONING ACT
AROOSTOOK COUNTY)
SHORELAND ZONING ORDINANCE & MAP)
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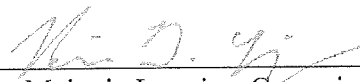
BASED on the above Findings of Fact, the Commissioner makes the following CONCLUSION:

1. The Town of Island Falls has adequately met the requirements of the Act, and the amendments to the Ordinance and Map are consistent with the Guidelines.

THEREFORE, the Commissioner APPROVES the Ordinance and Map as amended on March 17, 2021.

DONE AND DATED AT AUGUSTA, MAINE, THIS 28TH DAY OF JUNE, 2021.

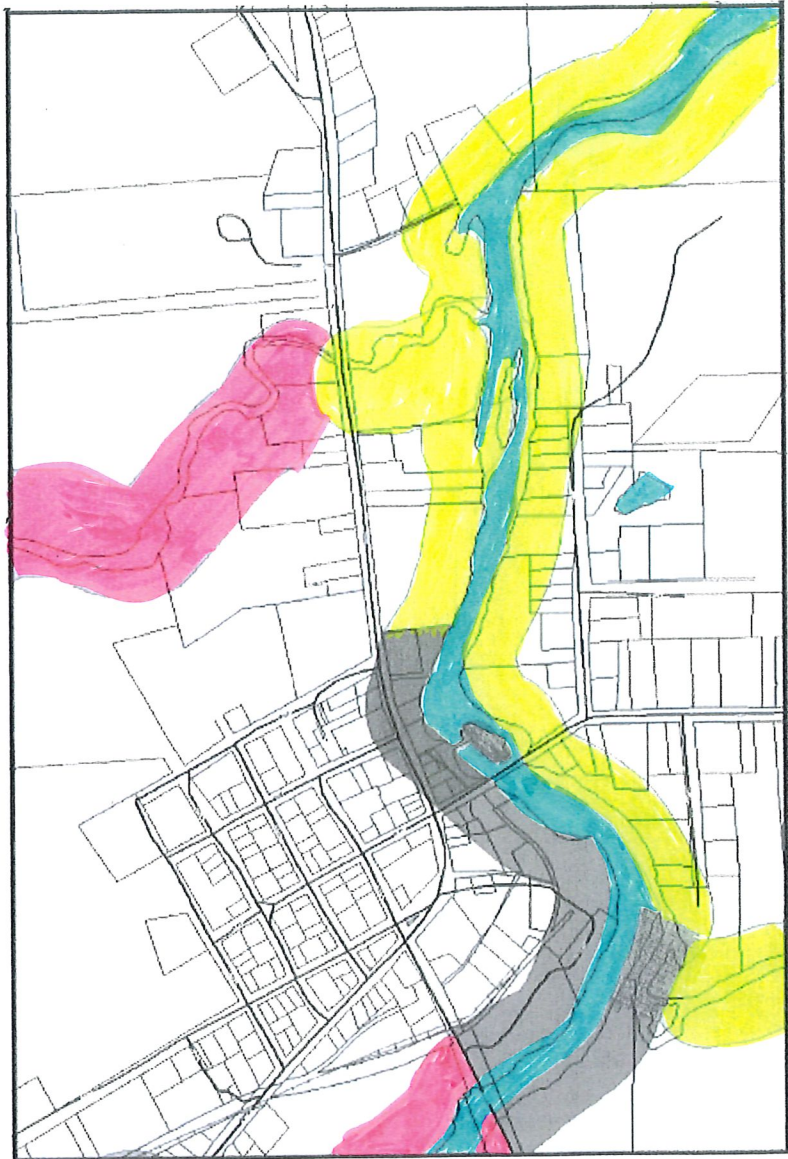
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

FILED
June 30th, 2021
State of Maine
Board of Environmental Protection

**Island Falls, Maine
Shoreland Zoning Map
As of 03/17/2021**



Legend

Village Area



250' General Development District



250' Limited Residential District



250' Resource Protection District



Body of Water - River



TOWN OF ISLAND FALLS

68 Houlton Road, P.O. Box 100
Island Falls, Maine 04747

Board of Selectmen

Frank Porter
Anthony Binotto
Anthony Bowers
Royden Hunt
James Lord

Town Manager
Jutta Beyer

Town Clerk
Kelly Ripley

Phone
207.463.2246

Water Dept. Phone
207.463.2124

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207.463.2550

Website
www.islandfallsme.us

Dawn M Hurd
Maine Dept of Environmental Protection
Assistant Shoreland Zoning Coordinator
106 Hogan Road, Suite 6
Bangor, ME 04401

05/20/2021

Dear Dawn,

Attached is the amended Shoreland Zoning Ordinance which was approved at Town Meeting in March. I am also attaching the revised map.

If you should have any questions please call me.

Regards,

Jutta Beyer

Town Manager Island Falls



DEP INFORMATION SHEET

Appealing a Commissioner's Decision on a Shoreland Zoning Ordinance

Dated: November 2018

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) an administrative process before the Board of Environmental Protection (Board), or (2) a judicial process before Maine's Superior Court.

This information sheet, in conjunction with a review of the 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

The laws concerning the DEP's *Organization and Powers*, 38 Maine Revised Statutes (M.R.S.) § 341-D(4), the Mandatory Shoreland Zoning laws 38 M.R.S. § 438-A(3), and the DEP's Rules Concerning the Processing of Applications and Other Administrative Matters ("Chapter 2"), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP. All of the information listed in the next section of this information sheet must be submitted at the time 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.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time the appeal is submitted:

1. *Aggrieved Status.* The appeal must demonstrate that it is submitted on behalf of the municipality subject to the Commissioner's decision and must explain how the municipality may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, conditions, or other aspects of the written decision or of the review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific requirements that the appellant believes were not properly considered or fully addressed.
4. *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.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the ordinance, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the review process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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 general questions regarding the appeal process.
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 receipt of an appeal, and will provide the name of the DEP shoreland zoning staff member assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as new or additional evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's ordinance review file will be sent to Board members with a recommended decision from DEP staff. The appellant and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law generally allows aggrieved persons to appeal final Commissioner or Board decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 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 to the Board is not a prerequisite for a judicial appeal.

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

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, or 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.
