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LAND USE PLANNING COMMISSION
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COMMISSIONER

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Memorandum

To: Commissioners
From: Eric Larsson, Senior Planner
Date: June 3, 2015
Re: Adoption of nonconforming lot and storage structure rule revisions

Introduction

In the course of reviewing Chapter 10, it came to the attention of staff that the use of the word “waiver” should be removed from sections 10.11,E,3¹ and 10.11,E,4². This change is not intended to alter the type or location of development that may occur on nonconforming lots.

In a parallel process staff have developed a proposed rule revision that would allow permanent structures for the storage of personal property as a principal use on certain lots that would not otherwise meet the dimensional requirements for a residential structure. This change is a response to demand for personal property storage that is not part of a residential campsite or accessory to a residential dwelling on certain pre-Commission lots that are too small to be developed as a residential campsite or with a residential dwelling. The dimensional standards associated with this change are intended to ensure that there are no undue impacts on neighboring properties or waterbodies.

Background

The Commission discussed changes to the nonconforming lot rules at the January 2015 Commission meeting, and continued that discussion at the February 2015 meeting.

¹ Section 10.11,E,3 governs non-conforming pre-Commission lots.

² Section 10.11,E,4 governs post-Commission lots that were conforming when created.

The Commission reviewed proposed rule changes at the February 2015 meeting and, with due notice, posted the proposed rule for a 30 day public comment.³

Public Comments

The proposed rule changes were posted for public comment on April 15, 2015, and remained open until May 15, 2015. Staff did not receive any public comments during the official comment period, but posted one consolidated staff comment.

A rebuttal comment period was open until May 22, 2015, but no rebuttal comments were received.

During the course of final review, staff also recognized that a drafting error required a small wording change in the first sentence of 10.11,E,4 to ensure that the Commission's intent of only removing the term waiver and not changing the substance of the paragraph is fulfilled. This change plus the consolidated staff comment led to four minor edits to the proposed rule, which are intended to clarify the rule and better align it with existing rule provisions and the intent of the rulemaking. These revisions may be found in the attached proposed rule revisions, basis statement, and summary of public comments.

Staff Recommendations

Request for Commission Action: Staff recommends that the Commission adopt the nonconforming lot and storage structure rule revisions and basis statement.

Attachments:

- Proposed rule revisions; and
- Basis Statement and Summary of Public Comments

³ The Commission also asked staff to present additional information about shoreline setbacks for lots created after 1971. This issue is still pending further discussion by the Commission.

10.11 NONCONFORMING USES AND STRUCTURES

E. NONCONFORMING LOTS

...

3. **Pre-1971, Unimproved, Nonconforming Lots.** An unimproved, nonconforming lot, legally existing as of September 23, 1971, may not be developed unless the lot meets criteria set forth in a or b below or the Commission grants a variance to those standards that make the lot nonconforming. ~~However,~~
 - a. ~~If~~ a lot is at least 20,000 square feet in size, has at least 100 feet of shore frontage, and is not a contiguous lot as described in Section 10.11,E,5 below, the Commission may allow for development ~~by waiving, to the minimum extent necessary, the requirements that make the lot nonconforming. In this case a variance is not required. This waiver may only be granted if the proposed~~ provided the development would meet the shoreline setback requirements in Section 10.26,D and would meet the other dimensional requirements to the maximum extent possible.
 - b. If a lot is at least 15,000 square feet in size, has at least 100 feet of shore frontage and 75 feet of road frontage, and is not a contiguous lot as described in Section 10.11,E,5 below, the Commission may allow for one storage structure having a height of no more than 16 feet, and a floor area of not more than 160 square feet provided that the lot is located in a subdistrict that allows residential accessory structures, except for the P-AL or P-GP2 subdistricts, and the proposed development would meet the residential shoreline setback requirements in Section 10.26,D and would meet the other dimensional requirements to the maximum extent possible. This provision may not be used to place such a storage structure on the same lot as a campsite as defined in 12 M.R.S. § 682(15). The structure may not be used for human habitation, may not have internal plumbing or a permanent foundation, and may not be used for a home occupation or for commercial use, but may only be used for non-commercial storage purposes.
4. **Development of Other Nonconforming Lots.** When a lot was lawfully created after September 23, 1971, in conformity with LURC-Commission dimensional requirements applicable at the time, the Commission may ~~waive~~ allow for development provided the development would meet all dimensional requirements to the maximum extent possible except that in no case shall a setback be reduced below that in effect at the time of the creation of the lot, ~~to the minimum extent necessary the current dimensional requirements. Waived setbacks shall not be reduced below those in effect at the time of creation of the lot.~~

MAINE LAND USE PLANNING COMMISSION

Department of Agriculture, Conservation and Forestry



BASIS STATEMENT and SUMMARY OF COMMENTS

For AMENDMENTS to

CHAPTER 10: LAND USE DISTRICTS and STANDARDS REGARDING THE TREATMENT OF CERTAIN NONCONFORMING LOTS INCLUDING THE PLACEMENT OF PERMANENT STRUCTURES FOR THE STORAGE OF PERSONAL PROPERTY

June 3, 2015

STATUTORY AUTHORITY: 12 M.R.S. §§ 685-A(3), 685-A(7-A), and 685-C(5)

EFFECTIVE DATE OF THE RULE AMENDMENT:

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

The Maine Land Use Planning Commission adopts rule changes in the Chapter 10 Land Use Districts and Standards to remove the term “waiver” in Section 10.11, E,3 and 4, and clarify the dimensional requirements that apply to nonconforming lots. This change is not intended to alter the type or location of development that may occur on nonconforming lots.

The Maine Land Use Planning Commission also adopts rule changes in the Chapter 10 Land Use Districts and Standards to amend Section 10.11,E,3 to allow permanent structures for the storage of personal property on lots in excess of 15,000 square feet with a minimum of 100 feet of shore frontage and 75 feet of road frontage, provided such structures do not rest on a permanent foundation, and do not exceed 160 square feet in area or 16 feet in height. This change is a response to demand for personal property storage that is not part of a residential campsite or accessory to a residential dwelling on certain pre-Commission lots that are too small to be developed as a residential campsite or with a residential dwelling. The dimensional standards associated with this change are intended to ensure that there are no undue impacts on neighboring properties or waterbodies.

PUBLIC NOTICE OF RULEMAKING

On February 11, 2015, the Commission voted to hold a 30-day comment period. Notice of this rulemaking appeared in the weekly consolidated rulemaking notice on April 15, 2015. The record remained open until Friday, May 15, 2015, to allow interested persons to file written statements with the Commission, and for an additional 7 days until Friday, May 22, 2015, to allow interested persons to file written statements in rebuttal of statements filed up to May 15, 2015.

COMMENTS AND RESPONSES:

The Commission received one consolidated comment, and no rebuttal comments.

1. Exceptions to Dimensional Requirements for Campsites

- The Commission staff commented that:
- Section 10.11,E,3,b: replace “that is not more than 16 feet high to the peak” with “having a height of no more than 16 feet” to align with the Chapter 10 definition of the word “height.”
- Section 10.11,E,3,b: reword the phrase “may not be used for a home occupation or for commercial purposes, but may only be used for non-commercial storage purposes” to improve consistency with how use listings are phrased elsewhere in Chapter 10.
- Section 10.11,E,3,b: Make clear to the reader that when a storage structure is being permitted on an otherwise non-conforming lot it cannot be combined with a campsite because according to state law, campsites cannot contain an enclosed storage structure. This could be made clearer by inserting “as defined in 12 M.R.S. § 682(15)” after “campsite” to ensure that the reader is referred to the definition. (Note: residential campsites, which may include storage sheds, are addressed elsewhere in Chapter 10 and are not affected by this rulemaking.)
- Section 10.11,E,3,b allows for one “permanent storage structure” but states that the structure “may not have a permanent foundation,” which may cause confusion. Chapter 10 otherwise contains no definitions of permanent or temporary, except as they relate to docks and foundations.

Commenter(s): Land Use Planning Commission Staff

Response: Based on comments the Commission received regarding the Nonconforming Lots rulemaking, and to carry out the intent of the rulemaking, the Commission makes the following corrections and clarifications to the posted proposed rule. Deletions are shown with ~~striketrough~~. Additions are shown with underline.

Action(s): Revise the first sentence of Section 10.11,E,3,b of the proposed rule as follows:

If a lot is at least 15,000 square feet in size, has at least 100 feet of shore frontage and 75 feet of road frontage, and is not a contiguous lot as described in Section 10.11,E,5 below, the Commission may allow for one ~~permanent~~ storage structure ~~that is not more than 16 feet high to the peak~~ having a height of no more than 16 feet, and a floor area of

not more than 160 square feet provided that the lot is located in a subdistrict that allows residential accessory structures, except for the P-AL or P-GP2 subdistricts, and the proposed development would meet the residential shoreline setback requirements in Section 10.26,D and would meet the other dimensional requirements to the maximum extent possible.

Revise the second sentence of Section 10.11,E,3,b of the proposed rule as follows:

This provision may not be used to place such a storage structure on the same lot as a campsite as defined in 12 M.R.S.A § 682-(15).

Revise the third sentence of Section 10.11 E 3 b of the proposed rule as follows:

The structure may not be used for human habitation, may not have internal plumbing or a permanent foundation, and may not be used for a home occupation or for any commercial use purposes, but may only be used for non-commercial storage purposes.

Revise the first sentence of Section 10.11,E,4 of the proposed rule as follows:

When a lot was lawfully created after September 23, 1971, in conformity with Commission dimensional requirements applicable at the time, the Commission may allow for development provided the development would meet all dimensional requirements to the maximum extent possible except that in no case shall ~~the shoreline~~a setback be reduced below that in effect at the time of the creation of the lot.