



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

Memorandum

To: Commission Members
From: Nick Livesay
Date: September 5, 2014
Re: Potential Accessory Structure Rulemaking

At recent Commission meetings we have discussed the possibility of amending the current Chapter 10 rules that allow accessory structures without a permit subject to standards. Attached is draft rulemaking language that would require submission of a Notice of Intent to Construct form by a property owner before constructing an accessory structure that is allowed without a permit. The rulemaking itself, in terms of the amendment language, is very straight forward. If the Commission elects to move forward with rulemaking, doing so would present an opportunity to consider and possibly refine some of the existing standards that must be met for an accessory structure to be allowed without a permit. We have not presented any possible refinements in the attached the draft.

Also attached is a PowerPoint presentation that covers some of the general background we previously have discussed, such as the structure of the current rules and the 2012 rulemaking that eliminated the permitting requirement for many accessory structures. The PowerPoint also identifies what we understand to be the primary objectives the Commission would intend to further with any rulemaking.

Since the last meeting, we have discussed with Maine Revenue Service how a notification system would impact their work and thought more about the practical logistics of establishing a notification system and the associated advantages and disadvantages. At the upcoming meeting, we hope to discuss this learning with the Commission and, with the aid of the attached PowerPoint, assist the Commission its assessment of the current accessory structure rules and the value of moving to a notification system.

Attachments:

Draft rulemaking language
Accessory structure PowerPoint presentation

10.27 ACTIVITY-SPECIFIC STANDARDS

The documents referenced within this section may be obtained from the Commission's office in Augusta, or any of its regional offices.

....

P. ACCESSORY STRUCTURES

This section applies to new or expanded accessory structures allowed without a permit subject to standards. For the purposes of this section, accessory structures include but are not limited to garages, decks, porches, and sheds, whether attached or detached. This Section does not apply to structures identified separately in the use listings in Sub-Chapter II, such as docks or signs.

If all conditions and standards below cannot be met, a permit is required.

All new or expanded accessory structures allowed without a permit subject to standards must meet the ~~following~~ conditions in this Section. Prior to the start of construction, a person must complete and submit a Notice of Intent to Construct form to the Commission certifying that the proposed new or expanded accessory structure meets the following conditions:

1. Be accessory to a legally existing principal structure and use;
2. Meet the definition of accessory structure in Section 10.02,1;
3. Conform with the General Criteria for Approval in Section 10.24;
4. Meet the development standards in Sections 10.25 B, F, H and M, as applicable; and the activity specific standards in Section 10.27, as applicable;
5. Conform with any applicable permit conditions, and/or deed restrictions recorded for the property;
6. Meet all of the applicable dimensional requirements in Section 10.26,D-F;
7. Have unfinished interiors and not be used for human habitation;
8. Have no internal plumbing and not be supplied with water other than for a hose bib (exterior hose faucet);
9. Not be used for a home occupation;
10. Not be located in a flood prone area as defined in Section 10.02 and described in Section 10.23,C;
11. Neither use in construction nor produce any hazardous or toxic materials or substances;
12. Be consistent with the use of the principal structure and not add a new activity to those currently permitted at the site or facility; and
13. Not cause the total development on a property to exceed any gross floor area limitation related to the type of use.

Accessory Structures

September 10, 2014

Current Rules – Use Listing

- Accessory structures allowed without a permit subject to standards in the following subdistricts:
 - Commercial Industrial Development (D-CI)
 - Extended Settlement (D-ES)
 - General Development (D-GN)
 - Community Center Development (D-GN2)
 - Rural Settlement Development (D-GN3)
 - Residential Development (D-RS)
 - Community Residential Development (D-RS2)
 - Residential Recreation Development (D-RS3)
 - General Management (M-GN)
 - Great Pond Protection (P-GP)

Current Rules – What is Accessory?

- Accessory use or structure: “A use or structure subordinate to a permitted or conditional use or structure and customarily incidental to the permitted or conditional use of the structure.” 12 M.R.S. § 682(5); Ch. 10.02,1.
- Accessory structures include garages, decks, porches, and sheds, whether attached or detached. Ch. 10.27,P.

Current Rules – Key Requirements to be Allowed without a Permit

- Accessory to legally existing structure and use
- Total footprint does not exceed 750 sq. ft.
- Complies with 10.27,P, including:
 - Meets dimensional requirements (e.g., setbacks)
 - Unfinished interior and not used for human habitation
 - No internal plumbing; except hose bib allowed
 - Not used for home occupation

Current Rules – Permitting

- For accessory structures that do not qualify as a use allowed without a permit subject to standards, there is an option to seek a permit (e.g., garage greater than 750 sq. ft. or to be used as part of home occupation)

Key Changes in 2012

- Previously, a permit was required for all accessory structures associated with a residential use
- Previously, in most development subdistricts accessory structures for non-residential uses were allowed without a permit subject to standards if less than 500 sq. ft.
 - Permitting required in management and protection subdistricts

2012 Basis Statement

- “In an effort to reduce the regulatory burden on applicants and reduce staff time and paperwork for small projects with little or no impact, the Land Use Regulation Commission proposes changes to Chapter 10 to revise current language allowing ‘accessory structures’ with a permit subject to standards”

2012 Basis Statement

- Commission response to recommended notification requirement:

Accessory structures allowed under the proposed provision are only allowed in non-environmentally sensitive areas, or are required to meet minimum setback standards to protect adjacent resources. Development that requires Natural Resource Protection Act review under Maine DEP's permit by rule program typically involves direct impacts to resources. The locations these structures will be constructed have already been determined to be suitable for development, and the conditions limit property owners from building structures that will impact natural resources.

Requiring notification would eliminate any benefit to property owners and require approximately the same level of review by staff as the expedited building process. Requiring a notification would require approximately the same level of property owner paperwork and staff review time as an expedited building permit, and therefore essentially eliminate the intended benefits of this proposed change.

2012 Basis Statement

Recognition of Risk

- Commission recognizes “there is a risk of creating compliance issues because of this rule change, but believes the benefits to property owners and the reduction in staff time spent on small projects with little or no impact outweighs the risk.”

2014 Assessment of Current Rules

- With 2 years of experience, was prior “cost-benefit” assessment and risk analysis right?
- What are the tax implications of the current rules?
- Other key questions to assist in policy evaluation?

2014 Assessment

Costs and Benefits of Current Rule

- What is the risk of noncompliance?
- Cost: Impact of noncompliance on environment and neighboring uses and on staff enforcement workload
- Cost: Potential loss of captured value/tax implications
- Benefit: Reduced regulatory burden on property owners
- Benefit: Reduced staff time and paperwork on simple projects (approx. 29% of BPs were for accessory structures)

2014 Assessment Coordination with MRS

- From internal guidance on permit processing:
 - C. If the action is located in a Town or Plantation, email a complete copy of the permit to the Town or Plantation Assessor for those who have email addresses, or mail a hard copy to them at their postal address. Email and postal addresses for Towns and Plantations may be found in Outlook at **Public Folders\All Public Folders\DACF\Resource Information & Land Use Planning** under **LUPC-Outside Contacts**. To save expense, please use email whenever possible.

With the following exceptions, if the action is located in a Township, there is no need to make a copy for Maine Revenue Services, as they receive notification of permits issued via the “Monthly Signed Permits Report”. For Corrections to Permits and for Certificates of Compliance, email a pdf copy of the complete permit or certificate to Maine Revenue Services at lisa.whynot@maine.gov because these actions are not linked to the “Monthly Signed Permits Report”.

2014 Assessment

Coordination with MRS

- Accessory structures: currently MRS relies on self-reporting and property visits (presently on a 4-year cycle)
- MRS content with current system; could continue functioning without any LUPC permitting information

Potential 2014 Rule Change

- Amend 10.27,P:

This section applies to new or expanded accessory structures allowed without a permit subject to standards. For the purposes of this section, accessory structures include but are not limited to garages, decks, porches, and sheds, whether attached or detached. This Section does not apply to structures identified separately in the use listings in Sub-Chapter II, such as docks or signs.

If all conditions and standards below cannot be met, a permit is required.

All new or expanded accessory structures allowed without a permit subject to standards must meet the ~~following~~ conditions in this Section. Prior to the start of construction, a person must complete and submit a Notice of Intent to Construct form to the Commission certifying that the proposed new or expanded accessory structure meets the following conditions:

....

Potential 2014 Rule Change

- Notification form and submission requirement would:
 - Inform property owner of basic standards (property owner would need to know to request form or locate it on the website)
 - Allow Commission to track reported construction
 - Allow Commission to share notice info with MRS
- Would not:
 - Require site plan and setback information to allow staff verification of compliance of proposal
 - Require a fee or allow for triple fee for after-the-fact submission

2014 Assessment

Policy Goals of Rule Change

- Improved compliance
- Improved assessment and tax collection
- Other?

2014 Assessment

Costs and Benefits of Rule Change

- Discussion of anticipated impact on:
 - Compliance
 - Tax assessment and collection
 - Property owners
 - Commission resources
 - Other?