# STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

17 STATE HOUSE STATION AUGUSTA, MAINE 04333

BOARD ORDER

IN THE MATTER OF

MUNICIPALITY OF WHITEFIELD ) MANDATORY SHORELAND ZONING ACT

LINCOLN COUNTY, MAINE ) 38 M.R.S.A. SECTION 438-A(4)

STATE-IMPOSED ) ADOPTION OF ZONING PROVISIONS

SHORELAND ZONING ORDINANCE

CHAPTER #1244

Pursuant to the provisions of 5 M.R.S.A. Section 8053, 38 M.R.S.A. Sections 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal\_Shoreland Zoning Ordinances, as amended July 14, 1992, the Board of Environmental Protection has reviewed the existing land use regulations relating to the shoreland zone in the municipality of Whitefield, and FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act (Act) requires all municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of any great pond or river; within 250 feet of the upland edge of a freshwater wetland; and within 75 feet of the normal high-water line of a stream. Such zoning standards must be consistent with or no less stringent than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines) as adopted by the Board of Environmental Protection (Board).

2. The Guidelines were revised by the Board, effective March 24, 1990, and again on July 14, 1992. The revised Guidelines include more stringent land use standards than the Board's earlier Guidelines. In addition, the revised Guidelines contain new zoning and land use provisions for activities in shoreland areas adjacent to streams and freshwater wetlands as required by the Act as amended in January of 1989. Following the Board's revisions to the Guidelines in 1990, the Maine legislature, and the Board as authorized in 38 M.R.S.A. Section 438-A(2), established July 1, 1992 as the deadline for local ordinances to be amended consistent with the Guidelines.

3. 38 M.R.S.A. Section 438-A(4) requires the Board to adopt suitable zoning ordinances for municipalities which fail to adopt shoreland zoning ordinances consistent with or no less restrictive than the Guidelines.

4. The municipality of Whitefield has failed to adopt a shoreland zoning ordinance consistent with the Board's Guidelines within the time frame established by the Board. As of February 24, 1993 the municipality of Whitefield has not revised its shoreland zoning and land use standards consistent with the Board's Guidelines.

5. The Board can ensure that the municipality of Whitefield has adequate shoreland zoning and land use provisions for all shoreland areas within the municipality by adopting the Board's Guidelines ordinance and an appropriate zoning map based on the districting criteria contained in the Guidelines, for the municipality.

6. On October 26, 1992 copies of the Guidelines and draft zoning map were forwarded to the municipality of Whitefield for public comment. The Board also advertised in newspapers of state-wide circulation, its intent to adopt the Guidelines and zoning map for the Municipality.

7. On November 23, 1992 the Department met with the selectmen to discuss the proposed ordinance, and on December 9, 1992 the Department attended a public meeting at the Whitefield Town Hall to further discuss the proposal. Based on comments at the public meeting and from other written comments received, the proposed zoning map was revised. The revisions adjusted freshwater wetlands boundaries to exclude forested wetlands and forested components of other wetlands.

BASED on the above FINDINGS OF FACT, the Board makes the following CONCLUSIONS:

1. Whereas the deadline has past for municipalities to amend local shoreland zoning ordinances consistent with the Board's Guidelines, and whereas the municipality of Whitefield has failed to do so, the Board has a responsibility to adopt a suitable ordinance for the Municipality.

2. The Board can adopt a suitable ordinance for the Municipality by adopting the provisions contained in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, as amended July 14, 1992, with an appropriate zoning map based on the districting criteria contained in the Guidelines.

THEREFORE, THE BOARD HEREBY ORDERS AND ADOPTS for the municipality of Whitefield, all of the provisions contained in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, as amended July 14, 1992, for all areas within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of any freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of all streams, as defined in 38 M.R.S.A. Section 436. The Board further Orders that the map entitled Town of Whitefield Shoreland Zoning Map adopted by the Board of Environmental Protection is hereby incorporated into the Ordinance.

This ORDER shall remain in effect, and shall be binding upon the municipality of Whitefield until amended or repealed by the Board, or until the municipality of Whitefield adopts a shoreland zoning ordinance, consistent with the Board's Guidelines, and is approved by the Commissioner.

DONE AND DATED AT AUGUSTA, MAINE, THIS 24 DAY OF FEBRUARY 1993.

BOARD OF ENVIRONMENTAL PROTECTION

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Owen R. Stevens, Chairman

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

**BASIS STATEMENT**

The Mandatory Shoreland Zoning Act, Title 38 section 438-A, requires all municipalities to adopt shoreland zoning provisions for shoreland areas. Shoreland areas include areas within 250 feet of the normal high-water line of tidal waters, great ponds, and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of streams. Section 438-A also requires the Board of Environmental Protection to adopt minimum guidelines for shoreland zoning ordinances. Municipal ordinances must be consistent with or no less restrictive than the Board's guidelines.

In 1990 the Board of Environmental Protection amended its shoreland zoning guidelines and later established July 1, 1992 as the deadline for municipalities to update their local ordinances consistent with the guidelines. The Mandatory Shoreland Zoning Act requires the Board to adopt suitable ordinances for those municipalities which fail to adopt updated ordinances. This rule adopts a suitable ordinance for this municipality consistent with the Board's guidelines.

The Department held public meetings on the proposed State Imposed Shoreland Zoning Ordinance for the Town of Whitefield on November 23, 1992 and on December 9, 1992 at the Whitefield Town Office. The meetings focused on freshwater wetlands zoning, particularly as related to forested/non-forested wetlands. Following the meetings the Department modified the draft zoning map modifying wetland boundaries based on information provided on the National Wetlands Inventory maps.

One written comment was received by the Department from Mr. Albert Boynton. Based on his comments the Department excluded two wetlands from the draft map since the wetlands, excluding forested wetlands, were less than 10 acres in size.

STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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BOARD ORDER

IN THE MATTER OF

MUNICIPALITY OF WHITEFIELD ) MANDATORY SHORELAND ZONING ACT

LINCOLN COUNTY, MAINE ) 38 M.R.S.A. SECTION 438-A(4)

STATE-IMPOSED ) ADOPTION OF ZONING PROVISIONS

SHORELAND ZONING ORDINANCE

CHAPTER 1244

Pursuant to the provisions of 5 M.R.S.A. Section 8053, 38 M.R.S.A. Sections 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, as amended Augusta 7, 1994, the Board of Environmental Protection has reviewed the existing land use regulations relating to the shoreland zone n the municipality of Whitefield, including the State-imposed shoreland zoning ordinance, AND FINDS THE FOLLOWING FACTS:

1. On April 2, 1994 the Board of Environmental Protection adopted the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances and a shoreland zoning map for the town of Whitefield. Such action was necessary after the town failed to adopt a suitable ordinance as required.

2. On January 14, 1995 landowner, Andrew Berry, petitioned the Board of Environmental Protection to change the zoning adjacent to a freshwater wetland off route 218 near Preble Cemetery from the Limited Residential District to the Limited Commercial District. The subject area includes approximately 1320 feet of frontage along the east side of the wetland. The purpose of the rezoning request would be to develop a portion of his property as the base for his business, Maine Helicopters, Inc., which is currently located at the Augusta State Airport.

3. The wetland is not designated as a moderate or high value wetland, based on Inland Fisheries and Wildlife's 1973 wetlands inventory. Rezoning the parcel to Limited Commercial will not result in lesser environmental standards under the Ordinance.

4. The Board of Environmental Protection held a written comment period in order to gather public input on the proposed change. Public comments were accepted until May 30, 1995 at 5:00 P.M.

5. The Department received written comments from only Mr. Berry. Mr. Berry submitted a copy of a letter form the planning board stating that that board would grant Mr. Berry preliminary approval of his project, pending a zone change by the Department. Mr. Berry also stated that all abutting landowners had been notified of his proposal, in writing, and that no negative replies had been received.

BASED on the above FINDINGS OF FACT, the Board makes the following CONCLUSIONS:

1. The proposed zoning change is consistent with the Department's minimum Guidelines for municipal shoreland zoning ordinances.

THEREFORE, THE BOARD HEREBY ORDERS that the official zoning map adopted as part of the State-imposed Shoreland Zoning Ordinance for the municipality of Whitefield, be amended by placing the area on the east side of the freshwater wetland on the property of Andrew Berry and located east of Route 218 (approximately 1320 feet of wetland frontage), in the Limited Commercial District. (See Appendix A).

DONE AND DATED AT AUGUSTA, MAINE, THIS 14 DAY OF JUNE, 1995.

BOARD OF ENVIRONMENTAL PROTECTION

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Owen R. Stevens, Chairman

**BASIS STATEMENT**

This rule amends the state-imposed shoreland zoning map for the Town of Whitefield. The Mandatory Shoreland Zoning Act, Title 38 Section 438-A, requires the Board of Environmental Protection to adopt suitable ordinances for municipalities which fail to adopt a shoreland zoning ordinance consistent with the Board's Guidelines. The Board adopted an ordinance for Whitefield on April 2, 1994. Ordinance amendments can only be enacted by the Board.

This amendment, adopted by the Board at the request of the landowner, removes approximately 1320 feet of frontage along a freshwater wetland from the Limited Residential District and places the area in the Limited Commercial District. The land being rezoned is currently undeveloped. However, the land-use standards for the Limited Commercial District are at least as restrictive as the standards for a residential district. The Department's Guideline ordinance does not prohibit the establishment of new Limited Commercial Districts.

The Department received one comment during the written comment period. The landowner and petitioner, Andrew Berry, stated that the abutters had been notified of the proposed change in zoning, and that none had expressed displeasure with the potential zoning amendment.

Mr. Berry also provided the department with a letter from the Whitefield Planning Board which granted approval of Mr. Berry's planned heliport on the rezoned parcel, pending the Board of Environmental Protection's amendment of the zoning map.

The Department notes that there appears to be no significant opposition to Mr. Berry's zoning amendment request.

STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

BOARD ORDER

IN THE MATTER OF

AMENDMENT TO STATE-IMPOSED MANDATORY SHORELAND ZONING ACT

SHORELAND ZONING ORDINANCE 38 M.R.S.A., SECTION 438-A

FILE #BEP-B-94

Pursuant to the provisions of the Mandatory Shoreland Zoning Act, 38 M.R.S.A., Sections 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines), effective August 7, 1994, the Board of Environmental Protection (Board) has considered the shoreland zoning ordinances for the municipalities listed in Appendix A (attached) and FINDS THE FOLLOWING FACTS:

1. Since 1974, the Mandatory Shoreland Zoning Act (MSZA) has required all municipalities to establish zoning and land use controls in areas located within 250 feet of the normal high water line of any great pond, river or saltwater body. In 1989, that requirement was expanded to also include areas within 250 feet of the upland edge of freshwater and coastal wetlands, and within 75 feet of the normal high water line of streams.

2. The Board establishes minimum guidelines for the local land use control ordinances. The MSZA authorizes the Board to establish a deadline for municipalities to adopt local ordinances consistent with the Guidelines and the purposes of the MSZA. The MSZA also authorizes the Board to adopt shoreland zoning ordinances for those municipalities which fail to adopt a suitable local ordinance.

3. On March 24**,** 1990, the Board of Environmental Protection amended the Guidelines. The Board also established July 1, 1992 as the deadline for amending local ordinances consistent with the Guidelines. The municipalities listed in Appendix A did not meet the July 1 deadline, resulting in the Board adopting the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, including amendments which became effective on July 14, 1992**,** for those municipalities. Those state-imposed ordinances can only be amended by the Board.

4. Additional amendments were made to the Guidelines effective August 7, 1994. It is the responsibility of the Board to amend the state-imposed ordinances for the municipalities listed in Appendix A, in order to make those ordinances consistent with the current Guidelines.

5. The August 7, 1994 amendments as listed in Appendix B, and made part of this Order, include provisions which allow.:

A. The issuance of a special exception permit by the planning board, for a single family residence in a resource protection district under certain limited conditions.

B. Conversion of seasonal residences in a Resource Protection District.

C.Subsurface sewage disposal systems in a Resource Protection District for uses allowed in that district.

D. Existing road culverts to be replaced without the need for a permit, regardless of the diameter of the replacement culvert; and

E. The applicability of the shoreland zoning ordinance to structures built in, on, or over a water body or wetland but not attached to the shoreline.

6. Amendments referred to in paragraphs A. , B. , C. , D. above, result in a relaxation of the Guideline standards. Paragraph E. requires additional permitting activities, whereas that paragraph establishes a greater area of jurisdiction.

7. No written comments were received during a written comment period which ended on December 1, 1994.

BASED on the above Findings of Fact, the Board makes the following CONCLUSIONS:

1. The municipalities listed in Appendix A (attached) are subject to a state-imposed shoreland zoning ordinance consisting of the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective July 14, 1992. It is the Board's responsibility to amend the existing state-imposed ordinances, consistent with the August 7, 1994 amended Guidelines. However, the Guideline amendment which broadens the scope of the shoreland zone to include structures located beyond the normal highwater line, is not a mandatory requirement and should not be imposed upon the municipalities listed in Appendix A.

THEREFORE, the Board hereby AMENDS the State-imposed Shoreland Zoning Ordinances for the municipalities listed in Appendix A (attached), by adopting as the text of the ordinance, the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective August 7, 1994, except that the ordinance shall not apply to those structures located beyond (waterward) the normal high water line or upland edge of a wetland.

DONE AND DATED AT AUGUSTA, MAINE, THIS 14 DAY OF December, 1994.

BOARD OF ENVIRONMENTAL PROTECTION

 BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Owen R. Stevens, Chairman

APPENDIX A TO BOARD ORDER #BEP-B-94

|  |  |  |  |
| --- | --- | --- | --- |
| AMITY | (1267) | LIMINGTON | (1299) |
| ATHENS | (1245) | LOVELL | (1276) |
| AURORA | (1288) | LUDLOW | (1277) |
| BANCROFT | (1268) | MECHANIC FALLS | (1300) |
| BOWDOINHAM | (1246) | MEDFORD | (1279) |
| BOWERBANK | (1289) | MERRILL | (1281) |
| BRADFORD | (1247) | MILO | (1301) |
| BRIDGTON | (1290) | MOOSE RIVER | (1257) |
| BROWNVILLE | (1291) | NEWCASTLE | (1302) |
| CARTHAGE | (1292) | NORTH HAVEN | (1304) |
| CENTERVILLE | (1235) | ORIENT | (1282) |
| CHARLOTTE | (1249) | PARIS | (1260) |
| CHESTER | (1250) | PARSONSFIELD | (1306) |
| COLUMBIA | (1251) | PASSADUMKEAG | (1264) |
| COOPER | (1270) | PENOBSCOT | (1307) |
| CORINTH | (1271) | PLYMOUTH | (1308) |
| CRYSTAL | (1320) | ROCKLAND | (1325) |
| DURHAM | (1321) | SEDGWICK | (1241) |
| EDINBURG | (1253) | SHIRLEY | (1309) |
| ETNA | (1322) | SPRINGFIELD | (1261) |
| EXETER | (1293) | STACYVILLE | (1283) |
| FARMINGDALE | (1294) | STEUBEN | (1262) |
| FRANKFORT | (1295) | STOCKTON SPRINGS | (1310) |
| FREEDOM | (321.1) | STONINGTON | (1311) |
| GREENE | (1237) | STOW | (1326) |
| GUILFORD | (1296) | TALMADGE | (1263) |
| HANOVER | (1254) | TROY | (1243) |
| HARRINGTON | (1327) | VANCEBORO | (1285) |
| HERSEY | (1272) | WADE | (1286) |
| HIRAM | (1273) | WAITE | (1265) |
| ISLE AU HAUT | (1323) | WALDO | (1312) |
| KNOX | (1255) | WHITEFIELD | (1244) |
| LAGRANGE | (1275) | WOODVILLE | (1266) |
| LIMERICK | (1256) |  |  |
|  |  | TOTAL:67 |  |

APPENDIX B TO BOARD ORDER #BEP-B-94

CHAPTER 1000: AMENDMENTS TO THE STATE OF MAINE GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES

1. Change Section 3. Applicability, to read:

This ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any great pond, river or saltwater body; within 250feet, horizontal distance, of the upland edge of a coastal or freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of a stream. This Ordinance also applies to any structure built on, over, or abutting a dock, wharf or pier,, or other structure extending or located beyond the normal high-water line of a water body or within a wetland.

2. Change Section 14. Table 1, Land Uses in the Shoreland Zone to read:

 Land Uses District

 RP

15. Principal structures and uses

 A. One and two family residential ~~no~~ PB9

18. Conversion of seasonal residences ~~no~~ LPI

 to year-round residences

20. Private sewage disposal systems for ~~no~~ LPI

 allowed uses

Add footnote 9: Single family residential structures may be allowed by Special Exception only according to the provisions of Section 16.E, Special Exceptions. Two-family residential structures are not permitted.

3. Amend Section 16. Administration, subsection B., to read:

 B. Permits Required

After the effective date of this ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use.

A permit is not required for the replacement of an existing road culvert as long as:

~~1. The replacement culvert is not more than one standard culvert size wider in diameter than the culvert being replaced;~~

~~2.~~1. The replacement culvert is not more than 25% longer than the culvert being replaced

~~3~~ 2. The replacement culvert is not longer than 75 feet; and

~~4~~ 3. Adequate erosion Control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the water course.

4. Add new Section 16, E., Special Exceptions, as follows:

In addition to the criteria specified in Section 16.D. above, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

1. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

2. The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.

3. The proposed location of all buildings, sewage disposal systems and other improvements are:

a. Located on natural ground slopes of less than 20%; and

b. Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance.

If the floodway is not shown on the federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.

4. The total ground-floor area of all principal and accessory structures is limited to a maximum of 1,500 square feet.

5. All structures, except functionally water-dependent structures, are set back from the normal high-water line or upland edge of a wetland to the greatest practical extent, but not less than 75 feet. In determining the greatest practical extent, the planning board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-valued and high-value wetlands.

And change existing Sections 16 E., 16 F., and 16 G. to Sections 16 F., 16 G., and 16 H. respectively.

5. Add the following definitions to Section 17:

Floodway - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Velocity Zone - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources.

**BASIS STATEMENT**

The Mandatory Shoreland Zoning Act, Title 38 section 438-A, requires all municipalities to adopt shoreland zoning provisions for shoreland areas. Shoreland areas include areas within 250 feet of the normal high-water line of tidal waters, great ponds, and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of streams. Section 438-A also requires the Board of Environmental Protection to adopt minimum guidelines for shoreland zoning ordinances. Municipal ordinances must be consistent with or no less restrictive that the Board’s guidelines.

When a municipality fails to adopt a shoreland zoning ordinance consistent with, or more restrictive that the Guidelines the Board of Environmental Protection may adopt a suitable ordinance for the municipality. This rule amends the previously adopted state-imposed ordinances by the Board of Environmental Protection.

The amendments, however, do not incorporate the provision to regulate structures located over a water body or wetland, that provision would result in an unfunded mandate.

No comment were received during the written comment period which ended December 1, 1994.

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 16, 2025