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Legislative Document

No. 888

H.P. 655

House of Representatives, March 7, 2011

An Act To Allow Flexibility under Municipal Shoreland Zoning Ordinances

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative CURTIS of Madison.
Cosponsored by Senator WHITTEMORE of Somerset and
Representative: CUSHING of Hampden.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §439-A, sub-§4**, as amended by PL 1997, c. 726, §3, is further
3 amended to read:

4 **4. Setback requirements.** Notwithstanding any provision in a local ordinance to the
5 contrary, all new principal and accessory structures and substantial expansions of such
6 structures within the shoreland zone as established by section 435 must meet the water
7 setback requirements approved by the board, except functionally water-dependent uses.
8 A municipality may adopt as a local ordinance the provisions of this subsection and the
9 provisions of subsection 4-A. For purposes of this subsection, a substantial expansion of
10 a building is an expansion that increases either the volume or floor area by 30% or more.
11 This subsection is not intended to prohibit a municipal board of appeals from granting a
12 variance, subject to the requirements of this article and Title 30-A, section 4353, nor is it
13 intended to prohibit a less than substantial expansion of a legally existing nonconforming
14 structure, as long as the expansion does not create further nonconformity with the water
15 setback requirement.

16 **Sec. 2. 38 MRSA §439-A, sub-§4-A**, as amended by PL 1999, c. 243, §§6 and 7,
17 is further amended to read:

18 **4-A. Alternative expansion requirement.** ~~Notwithstanding~~ In addition or as an
19 alternative to subsection 4, a municipality may adopt an ordinance pursuant to this
20 subsection that permits expansions of principal and accessory structures that do not meet
21 the water setback requirements approved by the Board of Environmental Protection if the
22 ordinance is no less restrictive than the requirements in this subsection.

23 A. All new principal and accessory structures, excluding functionally water-
24 dependent uses, must meet the water setback requirements approved by the Board of
25 Environmental Protection. An expansion of a legally existing nonconforming
26 structure pursuant to this subsection may not create further nonconformity with the
27 water setback requirement.

28 B. Expansion of any portion of a structure within 25 feet of the normal high-water
29 line or upland edge of a wetland is prohibited, even if the expansion will not increase
30 nonconformity with the water setback requirement. Expansion of an accessory
31 structure that is located closer to the normal high-water line or upland edge of a
32 wetland than the principal structure is prohibited, even if the expansion will not
33 increase nonconformity with the water setback requirement.

34 C. Legally existing nonconforming principal and accessory structures that do not
35 meet the water setback requirements may be expanded or altered as follows, as long
36 as other applicable standards of land use adopted by the municipality are met and the
37 expansion is not prohibited by paragraph A or B.

38 (1) For structures located less than 75 feet from the normal high-water line or
39 upland edge of a wetland, the maximum combined total floor area for all
40 structures is 1,000 square feet, and the maximum height of any structure is 20
41 feet or the height of the existing structure, whichever is greater.

1 (2) For structures located less than 100 feet from the normal high-water line of a
2 great pond classified as GPA or a river flowing to a great pond classified as GPA,
3 the maximum combined total floor area for all structures is 1,500 square feet, and
4 the maximum height of any structure is 25 feet or the height of the existing
5 structure, whichever is greater, except that any portion of those structures located
6 less than 75 feet from the normal high-water line or upland edge of a wetland
7 must meet the floor area and height limits in subparagraph (1).

8 Existing principal and accessory structures that exceed the floor area or height limits
9 under this paragraph may not be expanded, except as provided in paragraph E.

10 For the purposes of this paragraph, a basement is not counted toward floor area.

11 D. When a basement is added to an existing structure or when a basement is
12 constructed as part of a reconstruction or replacement structure, the structure and the
13 basement must be placed so that the setback is met to the greatest practical extent, as
14 determined by the municipal planning board or, if authorized by the municipal
15 planning board, the certified code enforcement officer.

16 E. A municipality may permit an expansion that causes the maximum floor area
17 limits established in paragraph C to be exceeded by not more than 500 square feet if:

18 (1) The principal structure is set back at least 50 feet from the normal high-water
19 line or upland edge of a wetland;

20 (2) An existing well-distributed stand of trees and other vegetation, as defined in
21 the minimum guidelines adopted by the Board of Environmental Protection,
22 extends at least 50 feet inland from the normal high-water line or upland edge of
23 a wetland for the entire width of the property or, if such a stand is not present, a
24 written plan by the property owner to reestablish a buffer of native trees, shrubs
25 and other ground cover within 50 feet of the normal high-water line or upland
26 edge of a wetland is approved by the municipal planning board. The plan must
27 be implemented at the time of construction and must be designed to meet the
28 minimum guidelines adopted by the Board of Environmental Protection as the
29 vegetation matures. Rules adopted pursuant to this subparagraph are routine
30 technical rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A; and

31 (3) The municipal planning board approves a written mitigation plan. The plan
32 must be developed, implemented and maintained by the property owner. A
33 mitigation plan must provide for the following mitigation measures.

34 (a) Unstabilized areas resulting in soil erosion must be mulched, seeded or
35 otherwise stabilized and maintained to prevent further erosion and
36 sedimentation to water bodies and wetlands.

37 (b) Roofs and associated drainage systems, driveways, parking areas and
38 other nonvegetated surfaces must be designed or modified, as necessary, to
39 prevent concentrated flow of storm water runoff from reaching a water body
40 or wetland. Where possible, runoff must be directed through a vegetated area
41 or infiltrated into the soil through the use of a dry well, stone apron or similar
42 device.

1 The written plans required pursuant to subparagraphs 2 and 3 must be filed in the
2 registry of deeds of the county in which the property is located.

3 A copy of all permits issued pursuant to this paragraph must be forwarded by the
4 municipality to the department within 14 days of the issuance of the permit.

5 **Sec. 3. 38 MRSA §439-A, sub-§4-B** is enacted to read:

6 **4-B. Legally existing nonconforming structures.** In a municipality that has
7 adopted an ordinance under subsections 4 and 4-A, a legally existing nonconforming
8 structure may be expanded under only one of the ordinances, except that, if a structure
9 has previously been expanded pursuant to an ordinance adopted under subsection 4 and
10 the structure's maximum combined floor area is less than the expansion limits of
11 subsection 4-A, the maximum combined floor area of that structure may be further
12 expanded to the limits provided in an ordinance adopted under subsection 4-A.

13 **SUMMARY**

14 The bill allows a municipality to enact in its shoreland zoning ordinance alternative
15 provisions to the requirements in the Maine Revised Statutes, Title 38 that limit the
16 expansion of a nonconforming structure in a shoreland zone that increases the structure's
17 volume or floor area by 30% or more in addition to the requirements in Title 38.