

Chapter 170. Land Use

Article VIII. Shoreland Zoning

§ 170-101.12. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ACCESSORY STRUCTURE OR USE

A use or structure, which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

AGGRIEVED PARTY

An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this article; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

AGRICULTURE

The production, keeping or maintenance for sale or lease, of plants and/or animals, including, but not limited to, forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. Agriculture does not include forest management and timber harvesting activities.

AQUACULTURE

The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

ASSESSED VALUE

As used in this article, Town's assessed value shall be the amount shown on the Town assessing tax records. If the Town's certified assessment ratio to the state is less than 100%, the Town's value shall be adjusted accordingly.

BASAL AREA

The area of cross section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

BASEMENT

Any portion of a structure with a floor-to-ceiling height of six feet or more and having more than 50% of its volume below the existing ground level.

BOAT-LAUNCHING FACILITY

A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

BUREAU

State of Maine Department of Conservation's Bureau of Forestry.

CAMPGROUND

Any area or tract of land to accommodate two or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

CANOPY

The more or less continuous cover formed by tree crowns in a wooded area.

COASTAL WETLAND

All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year. For all the tidal shorelands within Boothbay Harbor, high-water shall be elevation 5.9 feet local datum, or 7.4 feet NGVD (National Geodetic Vertical Datum). USER NOTE: All areas below the maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

COMMERCIAL USE

The use of lands, buildings, or structures, other than a home occupation, defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

CROSS-SECTIONAL AREA

The cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight-line distance from the normal high-water-line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or

tributary stream channel depth is the average of the vertical distance from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.
[Amended 5-3-2008 by ATM Art. 87]

DBH

The diameter of a standing tree measured 4.5 feet from ground level.

DEVELOPMENT

A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

DIMENSIONAL REQUIREMENTS

A numerical standards relating to spatial relationships, including, but not limited to, setback, lot area, shore frontage, and height.

DISABILITY

Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

DRIVEWAY

A vehicular accessway less than 500 feet in length serving two single-family dwellings or one two-family dwelling, or less.

DWELLING UNIT

As used in shoreland zoning, a dwelling unit shall include any structure having a room or group of rooms equipped or designed for living or sleeping, including a toilet facility (water closet, hand washing, and bathing/shower); excluding motel, hotel rooms, rooms approved for bed-and-breakfast use, and other permitted business or functional water-dependent use.

[Added 5-2-2009 by ATM Art. 98]

EMERGENCY OPERATIONS

Operations conducted for the public health, safety, or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property, and livestock from the threat of destruction or injury.

ESSENTIAL SERVICES

Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

EXPANSION OF A STRUCTURE

An increase in the floor area or volume of a structure, including all extensions such as, but not limited to, attached decks, garages, porches, and greenhouses.

EXPANSION OF USE

The addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.

FAMILY

One or more persons occupying premises and living as a single housekeeping unit.

FLOODWAY

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

FLOOR AREA

The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure, such as porches and decks.

FOREST MANAGEMENT ACTIVITIES

Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

FORESTED WETLAND

A freshwater wetland dominated by woody vegetation that is six meters tall (approximately 20 feet) or taller.

FOUNDATION

The supporting substructure of a building or other structure, including, but not limited to, sills, posts, basements, slabs, frost walls, or other supporting base, object, or device consisting of concrete, block, brick, wood or any other similar material.

[Amended 5-3-2008 by ATM Art. 87]

FRESHWATER WETLAND

A. Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which areas:

[Amended 5-3-2008 by ATM Art. 87]

- (1) Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
- (2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

B. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

FUNCTIONALLY WATER-DEPENDENT USES

Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat-building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.

GREAT POND

Any inland body of water which in a natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres, except, for the purposes of this article, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

GREAT POND CLASSIFIED GPA

Any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A, § 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

GROUND COVER

Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

HARVEST AREA

The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

[Amended 5-3-2008 by ATM Art. 87]

HEIGHT OF A STRUCTURE

The vertical distance between the mean finish grade or the mean original grade, whichever is lowest in elevation, at the structure, and the highest point of the roof. Excluded are, chimneys, steeples, antennas (not antenna dishes or Antenna towers) and similar appurtenances which have no floor area. Cross-reference Chapter **170**, § **170-113**, for additional standards.

HIGH WATER

See "upland edge of a wetland or coastal wetland."

[Amended 5-3-2008 by ATM Art. 87]

HOME OCCUPATION

An occupation or profession which is customarily conducted on or in a residential structure or property and which is:

- A. Clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and
- B. Which employs no more than two persons other than family members residing in the home.

INCREASE IN NONCONFORMITY OF A STRUCTURE

- A. Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity, such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure.
- B. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally, provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

INDIVIDUAL PRIVATE CAMPSITE

An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to a gravel pad, parking areas, fireplace, or tent platform.

INDUSTRIAL

The assembling, fabrication, finishing, manufacturing, packaging, or processing of goods, or the extraction of minerals.

INSTITUTIONAL

A nonprofit or quasipublic use, or institution, such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

LAND MANAGEMENT ROAD

LICENSED FORESTER

A forester licensed under Maine Laws Title 32 M.R.S.A. Chapter **76**.
[Amended 5-3-2008 by ATM Art. 87]

LOT AREA

The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

MARINA

A business establishment having frontage on navigable water and, as its principal use, providing for hire off-shore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.^[1]

MINERAL EXPLORATION

Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

MINERAL EXTRACTION

Any operation within any twelve-month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and transports the product removed, away from the extraction site.

MINIMUM LOT WIDTH

The closest distance between the side lot lines of a lot. When only two lot lines extend into the Shoreland Zone, both lot lines shall be considered to be side lot lines.

MULTI-UNIT RESIDENTIAL

A residential structure containing three or more residential dwelling units.

NATIVE

Indigenous to the local forests.

NONCONFORMING CONDITION

Nonconforming lot, structure, or use which is allowed solely because it was in lawful existence at the time this article or subsequent amendment took effect.

NONCONFORMING LOT

A single lot of record which, at the effective date of adoption or amendment of this article, does not meet the area, frontage, or width requirements of the district in which it is located.

NONCONFORMING STRUCTURE

A structure which does not house or is used for a functionally water-dependent use, or which does not meet any one or more of the following dimensional requirements, setback, height, lot coverage, or in, on or over the water or wetland, but which is allowed solely because it was in lawful existence at the time this article or subsequent amendments took effect.

[Amended 5-5-2012 by ATM Art. 28]

NONCONFORMING USE

Use of buildings, structures, premises, land, or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this article or subsequent amendments took effect.

NORMAL HIGH-WATER LINE (NON-TIDAL WATERS)

That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support nonforested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. USER NOTE: Adjacent to tidal waters, setbacks are measured from the upland edge of the coastal wetland.^[2]

PERSON

An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

PIER, DOCK, WHARF and BRIDGES

A. PIER and/or DOCK

A platform extending from a shore over water and supported by piles or pillars, used to secure, protect, and provide access to or dockage for ships, boats or other similar water devices.

B. WHARF

A landing place or pier where ships may tie up and load or unload.

C. BRIDGE

A structure spanning and providing passage over a gap or barrier, such as a river or roadway.

PRINCIPAL STRUCTURE

A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

PRINCIPAL USE

A use other than one which is wholly incidental or accessory to another use on the same premises.

PUBLIC FACILITY

Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased or otherwise operated or funded by a governmental body or public entity.

RECENT FLOODPLAIN SOILS

The following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Alluvial	Cornish	Charles
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

RECREATIONAL FACILITY

A place designed and equipped for the conduct of sports, leisure-time activities, and other customary and usual recreational activities, excluding boat-launching facilities.

RECREATIONAL VEHICLE

A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

REPLACEMENT SYSTEM

A system intended to replace:

- A. An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure;
or
- B. Any existing overboard wastewater discharge.

RESIDENTIAL DWELLING UNIT

A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes, and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

RESIDUAL BASAL AREA

The average of the basal area of trees remaining on a site.

RIPRAP

Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

RIVER

A free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of 25 square miles to its mouth. USER NOTE: The portion of a river that is subject to tidal action is a coastal wetland.

ROAD

A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

SALT MARSH

Areas of coastal wetland (most often along coastal bays) that support salt-tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

SALT MEADOW

Areas of a coastal wetland that support salt-tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three square occurs in fresher areas.

SERVICE DROP

Any utility line extension, which does not cross, or run beneath any portion of a water body, provided that:

- A. In the case of electric service:
 - (1) The placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
 - (2) The total length of the extension is less than 1,000 feet.
- B. In the case of telephone service:
 - (1) The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles; or

(2) The extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

SETBACK

The nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

SHORE FRONTAGE

The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

SHORELAND ZONE

The land area located 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 a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.

SHORELINE

The normal high-water line, or upland edge of a freshwater or coastal wetland.

SKID TRAIL

A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

SLASH

The residue, e.g., treetops and branches, left on the ground after a timber harvest.

STREAM

A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15 minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

STRUCTURE

Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground or over the water; exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, tower, and satellite dishes that are 30 inches or greater in diameter.

SUBSTANTIAL START

Completion of 30% of a permitted structure or use measured as a percentage of estimated total cost.

SUBSURFACE SEWAGE DISPOSAL SYSTEM

Any system designed to dispose of waste or wastewater on or beneath the surface of the earth; includes, but is not limited to, septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. § 414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system.

SUSTAINED SLOPE

A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

TIDAL WATERS

All waters affected by tidal action during the maximum spring tide.

TIMBER HARVESTING

The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the Shoreland Zone on a lot that has fewer than two acres within the Shoreland Zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to § 170-101.10P, Clearing or removal of vegetation for activities other than timber harvesting.

TIMBER HARVESTING, RELATED ACTIVITIES

Means or is the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

TRIBUTARY STREAM

A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term "stream" as defined elsewhere in this article, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland. USER NOTES: Water setback requirements apply to tributary streams within the Shoreland Zone.

UPLAND EDGE OF A WETLAND

The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt-tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six meters (approximately 20 feet) tall or taller.

VEGETATION

All live trees, shrubs, and other plants, including, without limitation, trees both over and under four inches in diameter, measured at 4 1/2 feet above ground level.

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.

VOLUME OF A STRUCTURE

The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof. Volume also includes the basement area having a headroom of six feet or greater in height.

WATER BODY

Any great pond, river, or stream.

WATER CROSSING

Any project extending from one bank to the opposite bank of a river, or stream, tributary stream, or wetland, whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

WETLAND

See "freshwater wetland" or "coastal wetland."

WOODY VEGETATION

Live trees or woody, nonherbaceous shrubs.

[1] *Editor's Note: The former definition of "market value," which immediately followed this definition, was repealed 5-3-2008 by ATM Art. 87.*

[2] *Editor's Note: See also the definition of "coastal wetlands" above.*