



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

 **COPY**



MELANIE LOYZIM
COMMISSIONER

June 18, 2024

Dennis Dever
Town of Cranberry Isles
61 Main Street, PO Box 56
Islesford, ME 04646

Subject: Conditional Approval of Amendments to the Shoreland Zoning Ordinance and Map

Dear Mr. Dever,

The Commissioner of the Department of Environmental Protection (Department) has reviewed the Town of Cranberry Isle’s Land Use and Shoreland Zoning Ordinance.

Please find enclosed Department Order #19-2024 (Order) conditionally approving the Ordinance, as adopted on March 16, 2024, and received by the Department on May 6, 2024.

The conditions of the Order are binding on the Town of Cranberry Isle’s (municipality) and must be administered as part of the Ordinance. Should the Ordinance be amended in the future to address the deficiencies identified in the Order, the Department can then fully approve the Ordinance and repeal the Order.

Should you or the other town officials have any questions, please don’t hesitate to contact me at (207) 275-9836, jessica.sayers@maine.gov, or by mail at the Bangor address below.

Sincerely,

Jessica Sayers
Maine Department of Environmental Protection
Assistant Shoreland Zoning Coordinator

enclosed: Department Order #19-2024

Augusta
17 South House Station
Augusta, Maine 04401-3900
(207) 287-7888 FAX: (207) 287-7826

Bangor
506 Hogan Road, Suite 100
Bangor, Maine 04401
(207) 941-4870 FAX: (207) 941-4554

Portland
512 Commercial Road
Portland, Maine 04103
(207) 822-6300 FAX: (207) 822-6368

Presque Isle
125 General Drive, Skyway Park
Presque Isle, Maine 04759
(207) 761-0477 FAX: (207) 761-0144



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF CRANBERRY ISLES) MANDATORY SHORELAND ZONING ACT
HANCOCK COUNTY)
SHORELAND ZONING ORDINANCE)
ORDER #19-2024) CONDITIONAL APPROVAL

Pursuant to the provisions of 38 M.R.S. §§ 435-448, the *Mandatory Shoreland Zoning Act* (“Act”), and the Maine Department of Environmental Protection’s *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 C.M.R. ch. 1000 (amended January 26, 2015) (“Guidelines”), the Department of Environmental Protection has considered the request for approval of the Town of Cranberry Isles Shoreland Zoning Ordinance (Ordinance), as amended on March 16, 2024, and FINDS THE FOLLOWING FACTS:

1. The Act requires municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of great ponds and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the Guidelines. 38 M.R.S. §§435 & 438-A.
2. The Act specifies that before a locally adopted shoreland zoning ordinance, or amendment to that ordinance, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (“Commissioner”). The Commissioner may approve, approve with conditions, or deny the ordinance or amendment. If denied, or approved with conditions, such action must be preceded by notice to the municipality. If the Commissioner fails to act within 45 days of receipt of the ordinance or amendment, then the ordinance or amendment is automatically approved. 38 M.R.S. § 438-A.
3. On May 6, 2024, the Town of Cranberry Isles submitted the following amendments to its Ordinance as adopted on March 16, 2024, to the Department for review:
 - A. Section 15(B)(2) *Principal and Accessory Structures* was amended to incorporate the expansion standards for nonconforming structures in a floodplain.
4. The Department's review of the Ordinance has revealed the following significant deficiency:
 - A. Section 15(B)(2) *Principal and Accessory Structures* allows for a less restrictive expansion height within applicable districts and omits required information for the floodplain expansion standard.

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- B. Section 18 *Definitions* fails to include the correct definition for the term “Expansion of a Structure.”
 - C. Section 18 *Definitions* fails to include the correct definition for the term “Height of a Structure.”
5. On June 18, 2024, the Town of Cranberry Isles was notified by the Department of the above deficiencies, and the proposed conditional approval of the Ordinance.

BASED on the above Findings of Fact, the Commissioner makes the following CONCLUSION:

- 1. The deficiencies noted in paragraph 4 above can be addressed by the Commissioner approving the Ordinance with conditions. This will result in the Ordinance being substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.S.R., Section 438-A, and the minimum Guidelines.

THEREFORE, the Commissioner APPROVES the Ordinance, as amended on March 16, 2024, SUBJECT TO THE ATTACHED CONDITIONS:

- 1. Section 15(B)(2) *Principal and Accessory Structures* shall be amended in part to remove the ~~strike-through~~ language and add the highlighted language:

(2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial, General Development, Commercial Fisheries Maritime Activities, and Stream Protection Districts, shall not exceed ~~twenty (20) feet in height if within seventy five (75) feet of the normal high water line of a water body, tributary stream, or upland edge of a wetland or thirty five (35) feet in height if further than seventy five (75) feet from the normal high water line of a water body, tributary stream, or upland edge of a wetland~~ **thirty-five (35) feet in height**. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area. A cupola, dome, widow’s walk or other similar feature is exempt from the height limits in accordance with 38 M.R.S.A. Section 439-A(9). **Notwithstanding the limitations on height imposed under Sections 12 C1 (a), (b), & (c)** the height of a structure that is a legally existing nonconforming principal or accessory structure may be raised to, but not above, the minimum elevation necessary to be consistent with the local floodplain management elevation requirement or to 3 feet above base flood elevation, whichever is greater, as long as the structure is relocated, reconstructed, replaced or elevated within the boundaries of the parcel so that the water body or wetland setback requirement is met to the greatest practical extent. This paragraph applies to structures that:

- (1) Have been or are proposed to be relocated, reconstructed, replaced or elevated to be consistent with the local floodplain management elevation requirement; and

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(2) Are located in an area of special flood hazard.

2. Section 18 *Definitions* shall be amended in part to add the highlighted language:

Expansion of a structure - an increase in the footprint or height of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

3. Section 18 *Definitions* shall be amended in part to add the highlighted language:

Height of a Structure - (A) With respect to existing principal or accessory structures, including legally existing nonconforming structures, located within an area of special flood hazard that have been or are proposed to be relocated, reconstructed, replaced or elevated to be consistent with the minimum elevation required by a local floodplain management ordinance, the vertical distance between the bottom of the sill of the structure to the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances that have no floor area; and
(B) With respect to new principal or accessory structures and to existing principal or accessory structures other than those described in paragraph A, including legally existing nonconforming structures, the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances that have no floor area.

DONE AND DATED AT AUGUSTA, MAINE, THIS 20th DAY OF JUNE 2024.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

FILED
June 20th, 2024
State of Maine
Board of Environmental Protection