



# Saco River Corridor Commission

*"Communities Working Together To Protect Our Rivers"*

February 25, 2019

Dear member communities of the Saco River Corridor,

The Saco River Corridor Commission is initiating rulemaking changes to the following performance standards: Chapter 102, Standard Conditions of Approval and Chapter 107, Performance Standards Governing Expansions of Existing Nonconforming Uses, Including Structures.

We have mailed the enclosed, proposed changes to the town clerk and code enforcement officer of each member municipality. Please see to it that all other interested parties receive this information. This packet will also be sent out via email today. The enclosure includes summaries of the proposed changes in addition to the proposed content (proposed changes are noted in Calibri and italic font). The commission will hold a **public hearing on Tuesday, March 5, 2019, at 7 PM** at the Dayton Town hall to discuss these proposed changes. The written comment period will extend until March 16, 2019. Comments may be forwarded to our office at the address listed in the letterhead below. We welcome full participation from the communities we serve in the consideration of these proposed changes. Do not hesitate to contact us with any questions, comments or concerns.

The Saco River Corridor Commission, established in 1973, remains committed to protect public health, safety, and the quality of life for the State of Maine through the regulation of land and water uses, protection and conservation of the region's unique and exceptional natural resources, and through the prevention of impacts caused by incompatible development. We look forward to hearing from you all and hope to see some of you at the public hearing.

Sincerely,

Dalyn Houser

Executive Director



**Chapter 102: STANDARD CONDITIONS OF APPROVAL**

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SUMMARY: All projects approved within the corridor must conform to a general set of standards related to vegetation removal, erosion control, beaches, driveways, and compliance with all associated federal, state, and local laws.

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**1. Scope.**

The following Standard Conditions shall apply to all permits and variances issued by the Saco River Corridor Commission, unless otherwise stated in the permit or variance, or in the Special Conditions attached thereto.

**2. Standard Conditions of Approval.**

- A. The applicant shall take all necessary measures consistent with this permit to ensure that his/her activities or those of his/her agents do not result in significant erosion of soils of the site during construction and operation of the project covered by this approval.
- B. On waterfront property within the Corridor, in order to assure that there is protection of water quality and wildlife habitat and to avoid any unreasonable visual impacts associated with development, there shall be no removal of live trees or other vegetation in the area within 75 horizontal feet of the normal high water line, except as follows:
  - (1) *A paved walkway, running parallel to the river and not to exceed 10 feet in width, may be approved pursuant to an application and issuance of a permit. A footpath not to exceed six feet in width as measured between tree trunks may be established, provided that the path meanders and does not create a cleared line of site to the water.*
  - (2) Selective cutting of trees within the buffer strip may be undertaken provided that a well distributed stand of trees and other vegetation is maintained. In no instance shall trees be removed where such removal would result in less than 3 trees in any 20 x 20 foot (400 square foot) area. Pruning of tree branches on the bottom 1/3 of the tree is permitted, as is the removal of dead, diseased or storm-damaged trees if such trees create a safety hazard to persons or property. These provisions notwithstanding, in no instance shall there be removal of more than 40% of the total volume of trees four inches or more in diameter, as measured at 4 ½ feet above ground level, in any ten year period.
  - (3) Existing vegetation under three feet in height and other ground cover shall not be removed, except to provide for a footpath as described above, or unless the applicant has applied for and received additional approval from the Commission to develop access for other permitted uses requiring access to the water.

SUMMARY  
February 19, 2019

**Proposed Amendments to Chapter 102: Standard Conditions of Approval**

This proposed amendment involves changes to allow for a paved path or walkway, pursuant to an application and issuance of a permit, along the river without the need for a variance. This is a draft of proposed rulemaking changes, and anyone may submit comments regarding these proposed changes up until March 16, 2019.

- (4) The applicant shall also check into local shoreland zoning requirements regarding clearing in the shoreland zone and shall comply with all State and local standards in addition to those outlined above. Where there is a conflict among such standards, the more restrictive provisions shall apply.
- C. The applicant shall not create a beach, build a dock or otherwise alter the shoreline unless in compliance with the Act. Any docks, piers or floats in the fresh-water areas of the Corridor must be constructed or installed so that they are temporary and capable of seasonal removal and so that they do not extend more than 10% of the width of the river at any time or extend into the water more than 10 feet perpendicular to the shore, whichever is less.
- D. No paths, stairs, roads or other means of access to the waterfront, except as specified in this permit, shall be developed or constructed without application for and receipt of additional approval from the Commission.
- E. Except as specifically provided in this permit, there shall be no paving of driveways, paths or roadways, and no deposit of materials and no excavating or earthmoving on the property without application for and receipt of additional approval from the Commission.
- F. Except as otherwise provided in a Special Condition, all construction, including all necessary erosion control measures, shall be completed within two years of the date of this permit. If all work is not completed within the two-year period, the applicant must apply for and obtain a time extension or new permit.
- G. Upon completion of the project, the applicant shall so notify the Commission. Commission staff may check the site at any reasonable time for compliance with the terms and conditions of this approval.
- H. Work done by a contractor pursuant to this permit shall not begin until the contractor has been provided with a copy of this permit.
- I. Should the project be found, at any time, not to be in compliance with any of the conditions of this approval, or should the applicant construct or operate this development in any way other than specified in the application or supporting documents, or as specified in supporting testimony or evidence given at the administrative proceeding before the Commission, as modified by the conditions of this approval, then this approval shall be considered to have been violated.
- J. The applicant shall comply with all other applicable Federal, State, and Local laws, ordinances and regulations and shall apply for and obtain all other necessary licenses, permits or approvals prior to the commencement of the activity requiring such licenses, permits or approvals.
- K. This permit is limited to and includes the proposals and plans contained in the application and supporting documents, as modified by the written decision of the Commission, including any conditions. Any variations from the plans and proposals submitted by the applicant are subject to the review and approval of the Commission prior to implementation.
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STATUTORY AUTHORITY:38 M.R.S.A. Section 954-C.

EFFECTIVE DATE:

January 30, 2006 – filing 2006-39

SUMMARY  
February 19, 2019

**Proposed Amendments to Chapter 107: PERFORMANCE STANDARDS GOVERNING EXPANSIONS OF EXISTING NONCONFORMING USES, INCLUDING STRUCTURES**

This amendment will allow for the reconstruction or replacement of existing nonconforming structures by permit if the reconstruction or replacement meets certain criteria. Currently, Chapter 107 restricts all development within the shoreland zone (250 feet from the normal or mean high water line of the rivers) to one 30% expansion during the lifetime of the structure. However, this 30% expansion is only permitted to connect to the primary existing structure. This means that if someone wanted to demolish their structure and erect a new one, they would be unable to do so without a hardship variance as we have no standard in place to allow for the reconstruction of an existing nonconforming structure. The Maine DEP Chapter 1000 Shoreland Zoning Ordinance has been updated to allow for the reconstruction or replacement of structures, without a variance, within 100 feet of the water under various circumstances. These proposed changes will provide standards to allow for the reconstruction of existing nonconforming structures in certain circumstances, without a variance, such as the ME DEP Ch.1000 ordinance allows.

Shoreland zoning does not restrict the expansion of existing nonconforming structures when 100 feet back from the water, unless within the resource protection district. Section 4(b) will allow the commission to continue to restrict expansions to 30% within 100–250 feet from the normal or mean high water line, again with the added ability to demolish the structure and erect a new one with the issuance of a permit, as long as the new structure will not increase nonconformity and is set back to the greatest extent possible. Revegetation requirements for the removal, reconstruction, or replacement of such structures are also included and consistent with shoreland zoning.

Other proposed updates include prohibiting a change from one existing nonconforming use to another nonconforming use unless it is determined that the new use will not result in an increased adverse impact to the lands and waterways of the corridor. Suggested changes also include the option for an uninhabitable shed for storage on nonconforming lots. DEP shoreland zoning allows for the placement of a shed on nonconforming lots as long as it is no closer to the water than the primary structure. The proposed change would not allow a shed unless it can be placed at least 75 feet back from the normal or mean high water line.

## 94-412 SACO RIVER CORRIDOR COMMISSION

### Chapter 107: PERFORMANCE STANDARDS GOVERNING EXPANSIONS OF EXISTING NONCONFORMING USES, INCLUDING STRUCTURES

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SUMMARY: The expansion of any existing nonconforming structure within the shoreland zone is limited to 30 percent calculated by both square footage and cubic footage and the structure can go no closer to the water than the existing closest point. *The reconstruction or replacement of existing nonconforming structures may be allowable by permit if the reconstruction or replacement meets certain criteria. A nonconforming use may not be changed to another nonconforming use unless it is determined that the new use will not result in an increased adverse impact to the lands and waterways of the corridor.*

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#### 1. Scope.

This regulation shall be effective in all areas of the Saco River Corridor as defined in Title 38 M.R.S.A. Section 953 and shall apply to all nonconforming uses or structures in existence prior to March 19, 1974 and to all nonconforming uses or structures established after March 19, 1974, and which legally exist as a result of the granting of a variance by the Commission.

#### 2. Definitions.

The terms expansion, enlargement, and extension shall, for the purposes of these standards, be synonymous and shall mean any increase in the land area covered by an existing nonconforming use, or any increase in any dimension of a nonconforming structure, including height.

#### 3. Criteria for Approving an Expansion to an Existing Nonconforming Use within the Corridor.

- A. The proposed expansion will be on soils suitable for the proposed use and will not unreasonably involve any of the factors enumerated in 38 M.R.S.A. Section 959-A.1.A.-K. of the Act.
- B. The proposed expansion will not result in an increase in nonconformity when all applicable performance standards are applied.
- C. If the expansion involves any increase in the number of bedrooms in a single or multi-family residential dwelling, or if it involves an anticipated increase in the amount of wastewater generated by the expanded use, then, prior to issuance of any permit for the expansion, the applicant shall provide documentation that the existing system of sewage disposal is adequate under the provisions of the Maine Plumbing Code *and/or* other applicable state requirements, or shall, as part of the permit application, submit a proposal for a new system adequate to serve the expanded use. No permit shall be issued by the Commission until the applicant has demonstrated that the existing sewage disposal system is adequate or that a system of sewage disposal adequate for the intended use, can and will be installed. The Commission may require, when a new system is found to be necessary, that the new system be installed prior to the commencement of the proposed expansion.



- D. A new or enlarged basement built under an existing structure is not considered an "expansion" if: (a) the structure and new foundation are set back from, and no closer to, the shoreline as the prior basement and are set back from the shoreline as much as possible in the determination of the commission; (b) the completed foundation does not extend beyond the exterior dimensions of the structure; and (c) it does not result in the structure being raised by more than three (3) feet from the pre-existing surface level.
- E. After September 1, 1983, in areas of the Saco River Corridor which are also within the Shoreland Zone established by 38 M.R.S.A. Section 435, if any portion of a structure does not meet applicable setback standards, that portion of the structure shall not be expanded in floor area or volume by 30% or more during the lifetime of the structure.
- F. Any buildings or building additions, including decks, porches, stoops and other portions of a building or building addition, shall not, when taken in total, cover more than 15% of the land area of the lot on which the building or building addition is situated. This standard shall not apply to areas of the corridor which were designated as General Development District prior to September 1, 1983.
- G. Any building addition must be an integral part of the primary residential structure. This shall be accomplished by a direct, physical *above-ground* connection of the addition/accessory structure to the existing structure by load bearing surfaces including roofs and common walls.
- H. ~~If the proposed expansion does not meet the above standards, the Commission may grant a variance after notice and public hearing, under the provisions of 38 M.R.S.A. Section 963. In the event the proposed structure does not meet the standards contained in 3(A-G) above, the applicant may seek a variance under the provisions of 38 M.R.S. Section 963.~~

**4. Criteria for Approval of Reconstruction or Replacement of an Existing Nonconforming Use within the Corridor.**

- A. *Within an area extending 100 feet from the normal or mean high water line of the Saco, Ossipee, or Little Ossipee Rivers, an existing nonconforming structure that does not meet the required setback or frontage requirements may be reconstructed or replaced if the proposed project meets the following criteria:*
  - (1) *The proposed structure would be no larger than the footprint or height of the original structure, except as allowed pursuant to Section 3(E) above.*
  - (2) *The proposed structure would not increase the nonconformity of the existing, original structure.*
  - (3) *If the structure can be relocated or reconstructed to meet the applicable setback and frontage requirements, then no portion of the reconstructed structure shall be replaced at less than the setback and frontage requirements for a new structure.*
  - (4) *The proposed structure must meet the setback requirements to the greatest extent possible as determined by the commission or its designee. In determining whether the proposed structure meets the setback to the greatest extent possible, the commission shall consider: the size of the lot, the slope of the land, the potential for soil erosion, the location of any other structures on the property and on*

*adjacent properties, the current location of the septic system and other on-site soils suitable for septic systems, the type and amount of vegetation to be removed to accomplish a relocation, the type and physical condition of the current foundation, and any other applicable standards to address the environmental factors pursuant to Chapter 103.*

- B. Within an area extending from 100 feet to 250 feet from the normal or mean high water line of the Saco, Ossipee, or Little Ossipee rivers, an existing nonconforming structure that does not meet the required setback or frontage requirements may be reconstructed or replaced if the proposed project meets the following criteria:*
- (1) The proposed structure does not increase the nonconformity of the original structure.*
  - (2) If the structure can be relocated or reconstructed to meet the applicable setback and frontage requirements, no portion of the proposed structure shall be replaced at less than the setback requirement for a new structure.*
  - (3) The proposed structure must meet the setback requirements to the greatest extent possible as determined by the commission or its designee. In determining whether the proposed structure meets the setback to the greatest extent possible, the commission shall consider the same criteria listed in subsection 4(A)(4) above.*
  - (4) If the proposed structure meets all criteria above, the existing structure may be reconstructed or replaced and also may be expanded in floor area or volume by 30% once during the lifetime of the structure.*
- C. In the event the proposed structure does not meet the standards contained in 4(A) or 4(B), the applicant may seek a variance under the provisions of 38 M.R.S. Section 963.*

**5. *Revegetation Requirements for the Removal, Reconstruction, or Replacement of an Existing Nonconforming Structure in the Corridor.***

- A. Trees removed in order to reconstruct or replace an existing nonconforming structure must be replaced. For every tree that is removed, it must be replaced with one native tree over three feet in height. The applicant may submit a revegetation plan to the commission for consideration along with a proposal for development, but replacement trees must be replanted no further from the water than the trees that were removed.*
- B. Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be revegetated with a combination of native shrubs, trees, and grasses.*

**6. *Nonconforming Uses.***

- A. An existing nonconforming use may not be changed to another nonconforming use unless it is determined by the commission that the proposed use will have no greater adverse impact on the rivers or lands adjacent to the use than the current existing use. This includes any change of use of a nonconforming structure.*
- B. The applicant will be required to submit a written application for approval of the proposed change of use along with documentation addressing any standards to address*

*the environmental factors in Chapter 103 which may be applicable. This will allow the commission to determine if the proposed change of use will result in a greater adverse impact to the land or waterways in the corridor.*

**7. Tool or Garden Sheds on Nonconforming Lots.**

- A. *On a nonconforming lot of record on which only one structure exists and where it is not possible to place an accessory structure meeting the required frontage and setback requirements, one single accessory structure for storage purposes, which may not be habitable and may not exceed a total of 80 square feet in size, may be placed on the parcel with a permit from the commission. The accessory structure must be set back from the water to the greatest extent possible and may not be closer to the water than the primary principal structure. The accessory structure must be set back at least 75 feet from the normal or mean high water line.*
  
- B. *In consideration of an application for a permit for the placement of the accessory structure, the commission will consider all factors set forth in Chapter 103: Standards to Address the Environmental Factors. In addition to the Chapter 103 standards, an applicant must demonstrate that the proposed accessory structure will not be located within 75 feet of the normal or mean high water line of the river.*

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STATUTORY AUTHORITY:38 M.R.S.A. Section 954-C.

EFFECTIVE DATE:

January 30, 2006 – filing 2006-44

