



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

May 10, 2021

Jaime V. Hanson
Code Enforcement Officer
Town of China
571 Lakeview Drive
China, Maine 04358

Subject: Conditional Approval of China’s Shoreland Zoning Ordinance

Dear Mr. Hanson,

The Commissioner of the Department of Environmental Protection (Department) has reviewed the Town of China’s Shoreland Zoning Ordinance. We appreciate the hard work that goes into keeping an ordinance up to date.

Please find enclosed Department Order #07-2021 (Order) conditionally approving the Ordinance, as adopted on April 6, 2019, and received by the Department on March 25, 2021.

The conditions of the Order are binding on the Town of China (municipality) and must be administered as part of the Ordinance. Should the Ordinance, including map, 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.

If you or any other municipal officials have questions relating to shoreland zoning, you may reach me at 441-7419 or by e-mail colin.a.clark@maine.gov.

Sincerely,

Colin. A. Clark
Shoreland Zoning Program
Bureau of Land and Water Quality
Department of Environmental Protection

enclosed: Department Order #07-2021

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143



DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF CHINA) MANDATORY SHORELAND ZONING ACT
KENNEBEC COUNTY)
SHORELAND ZONING ORDINANCE)
ORDER # 07-2021) APPROVAL WITH CONDITIONS

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 China’s Land Use Ordinance (Ordinance), as amended on April 6, 2019, 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 June 26, 2014, the Department approved the Town of China’s Ordinance, as amended on June 8, 2010 and June 12, 2012, with conditions in Department Order #2-2014 addressing deficiencies, including:
 - A. Section 5 J. Signs did not identify specific standards for signs in the shoreland zoned districts
4. On March 25, 2021, the Town of China submitted its amended Ordinance as adopted on April 6, 2019 to the Department for review:
 - A. Chapter 2 Section 2 (C)(1) *Structures* was amended to identify the land use requirements for structures in the Shoreland Zone.

- B. Chapter 2 Section 2 (C)(1)(II) *Expansion of a structure* changes the word “Enlargement” to “Expansions.”
- C. Chapter 2 Section 2 (C)(1)(II)(a)(iii) *Expansion of a structure* removes language about Resource Protection.
- D. Chapter 2 Section 2 (C)(1)(II)(b)(ii) *Expansion of a structure* reworks language dealing with foundation height.
- E. Chapter 2 Section 2 (C)(1)(IV)(a) & (b) *Relocation* adds numbering corrections and inserts a citation for the Subsurface Wastewater Rules.
- F. Chapter 2 Section 2 (C)(1)(V) *Reconstruction or Replacement* adds language identifying the relocation criteria within the ordinance.
- G. Chapter 2 Section 2 (C)(1)(VI) *Abandonment of non-conforming structures* was deleted from the ordinance.
- H. Chapter 2 Section 2 (C)(1)(VII) *Expansions of nonconforming structures including replacement foundations in the Resource Protection, Stream Protection, and Shoreland Districts* was renumber to “VI”, the title of the section was edited and the standards for expansions and foundations were combined into this section.
- I. Chapter 2 Section 2 (E)(1)(V) was deleted from the ordinance and the following sections were renumbered to reflect this.
- J. Chapter 2 Section 4 *Uses* was amended to reflect the approval source for Timber harvesting and to document the related section for certain activities listed in the table.
- K. Chapter 2 Section 5 *Land Use Standards* (A)(I)(b)(i) *Rural District* was amended to identify that mobile home parks have smaller lot sizes.
- L. Chapter 2 Section 5 *Land Use Standards* (C)(I)(a), (b) & (c) *Sanitary Standards* was amended to clarify standards for new construction of a subsurface wastewater system.
- M. Chapter 2 Section 5 *Land Use Standards* (F)(I) & (II) *Erosion and Sedimentation control* was amended to add the word “excavation” and add a reference to Best

TOWN OF CHINA) MANDATORY SHORELAND ZONING ACT
 KENNEBEC COUNTY)
 LAND USE ORDINANCE)
 ORDER #7-2021) APPROVAL WITH CONDITIONS

Management Practices published by Maine Nonpoint Source Training & Resource Center.

N. Chapter 2 Section 5 *Land Use Standards* (H)(I) *Agriculture* was amended to add the words “and Storage.”

O. Chapter 2 Section 5 *Land Use Standards* (P)(I)(a) & (b) *Campgrounds* was amended to include standards for placement of recreational vehicles and shelters as well as renumbering the section.

P. Chapter 2 Section 5 *Land Use Standards* (P)(II)(a-h) *Individual Private Campsites* was amended to include permitting standards for establishing a campsite as well as renumbering the section.

Q. Chapter 11 *Definitions* was amended as follows:

- a. The following terms were removed: *Bureau of Forestry, Campgrounds, DBH and Dwelling Terms.*
- b. The following terms were added: *Commercial Campground, Diameter Breast Height, Dwelling, and Footprint.*
- c. The following terms were amended: *Building, Certificate of Compliance, Code Enforcement Officer, Complete Application, Condominium, DEP’s Phosphorus Control Guide, Designated Scenic Resource, Disability, Driveway, Dwelling Unit, Elevation Certificate, Excavation, Final Plan, Flood Insurance Study, Floodway, Height of a Structure, High Intensity Soil Survey, Home Occupation, Individual Private Campsite, Industrial Structure, Industrial Use, Institutional, Kennel, Line of Sight, Lot, Lot Area, Lot of Record, Lot Width, Mineral Exploration, Mobile Home Park, Non-Conforming Lot, Non-Residential Subdivision, One Hundred Year Flood, Official Submittal Date, Piers dock and Wharves, Principal Structure, Recent Flood Plain Soils, Recording a Plan, Recreational Vehicle, Replacement System, Service Drop, Significant River Segments, Street, Street Classification, Targeted Market Coverage Area, Unreasonable Adverse Impact, Variance, Vegetated Buffer Strip, Violation, and Wireless Telecommunications Tower and Facility.*

TOWN OF CHINA) MANDATORY SHORELAND ZONING ACT
 KENNEBEC COUNTY)
 LAND USE ORDINANCE)
 ORDER #7-2021) APPROVAL WITH CONDITIONS

5. The Department's review of the amended Ordinance has revealed the following significant deficiencies:
 - A. Chapter 2 Section 2 (C)(VI)(a) *Expansion of non-conforming structures including replacement foundations in the Resource Protection, Stream Protection, and Shoreland Districts* fails to identify the correct permitting authority for expansions of non-conforming structures and replacement foundation.
 - B. Chapter 2 Section 5 (A)(I)(a)(viii) *Land Use Standards* excludes impervious surfaces, driveways, parking areas, etc. from counting towards lot coverage (also referred to as non-vegetated surfaces).
 - C. Chapter 2 Section 5 *Land Use Standards* (A)(I)(b)(i) *Rural District* reduces dimensional requirements for mobile home parks and multiunit dwellings.
 - D. Chapter 2 Section (5)(A)(I)(b)(v) *Land Use Standards* excludes impervious surfaces, driveways, parking areas, etc. from counting towards lot coverage (also referred to as non-vegetated surfaces).
 - E. Chapter 2 Section 5 (B)(III) *Land Use Standards* excludes impervious surfaces, driveways, parking areas, etc. from counting towards lot coverage (also referred to as non-vegetated surfaces).
 - F. Chapter 11 *Definitions* fails to incorporate complete definitions for the following terms: Bureau of Forestry, Campground, Expansion of a Structure, Home Occupation, Individual Private Campsite, Stream, Tree.
6. The Town of China 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 5 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.

TOWN OF CHINA) MANDATORY SHORELAND ZONING ACT
 KENNEBEC COUNTY)
 LAND USE ORDINANCE)
 ORDER #7-2021) APPROVAL WITH CONDITIONS

- 2. The Department Order 2-2014 is no longer necessary, because that Order is replaced by this Department Order 07-2021.

THEREFORE, the Commissioner APPROVES the Ordinance, as amended on April 6, 2019, SUBJECT TO THE ATTACHED CONDITIONS:

- 1. Chapter 2 Section 2 (VI)(a) *Expansion of non-conforming structures including replacement foundations in the Resource Protection, Stream Protection, and Shoreland Districts*, shall be amended as follows:
 - a. A non-conforming structure may be added to or expanded after obtaining a permit from the ~~Code Enforcement Officer (CEO)~~ **same permitting authority as that for a new structure**, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs below.
- 2. Chapter 2 Section 5 (A)(I)(a)(viii) *Land Use Standards*, shall be amended as follows:
 - viii. Maximum lot coverage: ~~structures of all types shall not cover more than 15% of any lot. (Impervious surfaces, driveways, parking areas, etc. do not apply to lot coverage)~~ **non-vegetated surfaces shall not exceed a total of fifteen (15%) percent of the portion of the lot located within the shoreland zone. For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed.**
- 3. Chapter 2 Section 5 *Land Use Standards* (A)(I)(b)(i) *Rural District*, shall be amended as follows:
 - i. Minimum lot area: 40,000 square feet. ~~Except~~ Mobile home parks are permitted to have smaller lot sizes as indicated in Chapter 3, Section 11.9(D)(3) of the China Land Development Code **when located outside of the Shoreland Zone**. Multi-unit dwellings shall have an additional 20,000 square feet for each unit more than one **when located outside of the Shoreland Zone. Inside the Shoreland Zone the minimum lot size and frontage shall be increased in proportion to the number of principal structures or dwelling units, or a combination thereof, on the lot so the average density of the use of the lot will be no greater than it would be if these structures or units or uses were to be placed on individual lots.** Land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.
- 4. Chapter 2 Section (5)(A)(I)(b)(v) *Land Use Standards* shall be amended as follows:

TOWN OF CHINA) MANDATORY SHORELAND ZONING ACT
 KENNEBEC COUNTY)
 LAND USE ORDINANCE)
 ORDER #7-2021) APPROVAL WITH CONDITIONS

v. Maximum lot coverage: ~~structures of all types shall not cover more than 20% of any lot. (Impervious surfaces, driveways, parking areas, etc. do not apply to lot coverage)~~ **Non-vegetated surfaces shall not exceed a total of twenty (20%) percent of the portion of the lot located within the shoreland zone. For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed.**

5. Chapter 2 Section 5 (B)(III) *Land Use Standards* shall be amended as follows:

III. Maximum lot coverage for all ~~structures~~ **non-vegetated surfaces:**

Resources Protection, Stream Protection and Shoreland District: 15%

Rural District 20% Note: ~~Impervious surfaces, driveways, parking areas, etc. do not apply to lot coverage.~~ **For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to, the following: structures, driveways, parking areas, and other areas from which vegetation has been removed.**

6. Section 104 *Definitions*, shall be amended to include the following:

Bureau of Forestry – State of Maine Department of Agriculture, Conservation, and Forestry, Bureau of Forestry.

Campground - Any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles, or other shelters.

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

Home Occupation: A commercial activity which results in a product or service intended for financial gain conducted in whole or in part on the same premises where the owner of the occupation resides and:

1. Which is clearly incidental to and compatible with the residential use of the property and surrounding residential uses,
2. Which may be carried on in the principal structure or an accessory structure,

TOWN OF CHINA
KENNEBEC COUNTY
LAND USE ORDINANCE
ORDER #7-2021

) MANDATORY SHORELAND ZONING ACT
)
)
) APPROVAL WITH CONDITIONS

- 3. Which will not exceed 1,00 square feet of structures, nor exceed the coverage of the principle use structure, and
- 4. Which employs no more than ~~three (3)~~ **two (2)** persons other than family members.

Individual private campsite – Any premises providing temporary accommodation in a recreational vehicle or tent and used exclusively by the owner and his or her family and friends **which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.**

Stream - A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent , highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river, or ~~to another waterbody or wetland within the shoreland area~~ where the stream meets the shoreland zone of another water body or wetland. **When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.**

Tree - A woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

DONE AND DATED AT AUGUSTA, MAINE, THIS 7TH DAY OF MAY, 2021.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

<p>FILED May 7th, 2021 State of Maine Board of Environmental Protection</p>



DEP INFORMATION SHEET

Appealing a Commissioner's Decision on a Shoreland Zoning Ordinance

Dated: November 2018

Contact: (207) 287-2452

SUMMARY

There are two methods available to a municipality seeking to appeal a shoreland zoning ordinance decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) an administrative process before the Board of Environmental Protection (Board), or (2) a judicial process before Maine's Superior Court.

This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 Maine Revised Statutes (M.R.S.) § 341-D(4), the Mandatory Shoreland Zoning laws 38 M.R.S. § 438-A(3), and the DEP's Rules Concerning the Processing of Applications and Other Administrative Matters ("Chapter 2"), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed. Evidence that is not in the DEP's record at the time of the decision may be offered as part of an appeal for consideration by the Board only as described at the end of the following section.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time the appeal is submitted:

1. *Aggrieved Status.* The appeal must demonstrate that it is submitted on behalf of the municipality subject to the Commissioner's decision and must explain how the municipality may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, conditions, or other aspects of the written decision or of the review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific requirements that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the shoreland zoning ordinance to changes in specific conditions imposed on the shoreland zoning ordinance.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the ordinance, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the review process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A municipal shoreland zoning file is public information made easily accessible by DEP. Upon request, the DEP will make the

material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the shoreland zoning ordinance was processed, and the procedural rules governing your appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* A municipality proceeding with shoreland zoning matters pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

AFTER A TIMELY APPEAL HAS BEEN FILED WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, and will provide the name of the DEP shoreland zoning staff member assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as new or additional evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's ordinance review file will be sent to Board members with a recommended decision from DEP staff. The appellant and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law generally allows aggrieved persons to appeal final Commissioner or Board decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001 *et seq.*; & M.R. Civ. P. 80C). Parties to the shoreland zoning ordinance decision must file a petition for review within 30 days after receipt of notice of the Commissioner's or Board's decision. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal. The filing of an appeal to the Board is not a prerequisite for a judicial appeal.

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452, or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
