

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #4-14/15 – Amending Chapter 27, “Zoning,” regarding vernal pools, natural, historic and archaeological resources, shoreland zoning, and variance approval process. Passed first reading on 7/7/14. ROLL CALL VOTE. Passage requires five (5) affirmative votes.

Position:

The Comprehensive Plan Implementation Committee made proposed amendments to Chapter 24, “Subdivisions,” and Chapter 27, “Zoning,” as part of its charge of implementing the City’s new Comprehensive Plan. This ordinance amendment addresses changes in Chapter 27.

The changes include revisions in the Shoreland Zoning section as requested by Mike Morse at the Maine Department of Environmental Protection. Normal high water for coastal wetlands is more precisely defined as that associated with the astronomical high tide. The amendments also clarify in the performance standards that land below the normal high water line should not be included when calculating buildable lot area. Included is language establishing zoning requirements, similar to those proposed for Ch. 24 Subdivisions, relative to historic and natural resources, including vernal pools.

Also included is an “opt-in” streamlining amendment per a new State law, championed by South Portland’s Rep. Terry Morrison, that would allow the Code Enforcement Officer to grant variances for ramps or other disability structures that encroach in setbacks. Disabled people would then not have to wait in rehab centers or similar facilities until the monthly Board of Appeals meeting in order to be allowed by their doctors to return home.

The Planning Board held a public hearing on April 22, 2014 and by a vote of 5-0 (Laidley absent; District At-Large vacant), the Planning Board recommended approval of the subdivision and zoning text amendments. The Planning Board report is included with the prior item.

The ordinance passed first reading on July 7, 2014 and is in order for second reading and action.

Tex Haeuser will be at Monday’s meeting to answer any questions.

Requested Action:

Council passage of ORDINANCE #4-14/15.


City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDINANCE #4-14/15

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District Five
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At Large
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At Large
THOMAS E. BLAKE

THE COUNCIL of the City of South Portland hereby ordains that Chapter 27, "ZONING," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows (additions are underlined; deletions are ~~struck out~~) and:

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BOARD OF APPEALS

Sec. 27-152. Powers and duties.

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(b) *Variance appeals.* To hear and decide appeals in specific cases for variance from the terms of this Chapter.

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3) Disability Variances.

(i) ~~The Board may grant a variance to the owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance granted pursuant to this subsection, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. Any equipment or structures permitted with a variance may be removed at any time but may not be modified, expanded, or enclosed unless a subsequent variance is granted by the Board. The term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall, or roof systems necessary for the safety or effectiveness of the structure.~~ Pursuant to 30-A M.R.S.A. § 4353-A, as may be amended, the Code Enforcement Officer may issue a permit to an owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the

person with a disability without the need for action by the Board. The Code Enforcement Officer may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with a disability lives in the dwelling.

For the purposes of this subsection, the term “structures necessary for access to or egress from the dwelling” includes ramps and associated railings, walls or roof systems necessary for the safety or effectiveness of the ramps.

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ARTICLE II. Definitions

Sec. 27-201. Definitions.

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Archaeological resource. A site with established or potential value as a location of prehistoric or historic archaeological significance as identified by the City’s Comprehensive Plan or a list of local archeological resources adopted by the City Council.

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Coastal wetlands. All tidal and subtidal lands; all areas 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 astronomical tide level for the year in which the activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

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Historic resource. A building, structure, or site with established historic significance as identified by the City’s Comprehensive Plan or a list of local historic resources adopted by the City Council.

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Normal high-water line. With respect to 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 non-forested 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 a part of the river or great pond. ~~With respect to tidal waters, the mean high tide level as identified in tide tables published by the National Ocean Service.~~ Adjacent to tidal waters, the normal high-water line is the upland edge of the coastal wetland.

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Significant wildlife habitat. Any area that is identified as significant wildlife habitat in accordance with the state’s Natural Resources Protection Act.

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Vernal pool. A natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy shrimp as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species.

Vernal pool, significant. A vernal pool that is defined as significant in accordance with the state's Natural Resources Protection Act as determined by the number and type of pool-breeding amphibian egg masses in a pool, or the presence of fairy shrimp (*Eubranchipus* spp.) or use of the pool by threatened or endangered species.

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ARTICLE XIII. Shoreland Overlay Districts

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Sec. 27-1305. Definitions.

For purposes of this Article, the following words shall be defined as stated herein:

- A. *Basement.* Any portion of a structure with a floor-to-ceiling height of six (6) feet or more and having more than fifty percent (50%) of its volume below existing ground level.
- B. *Coastal wetlands.* All tidal and subtidal lands; all areas 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 astronomical tide level for the year in which the activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.
- ~~B~~C. *Driveway.* A vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.
- ~~C~~D. *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.
- ~~D~~E. *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.

- EF. *Foundation.* The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.
- FG. *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 and 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 water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to coastal or inland waters.
- GH. *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.
- HI. *Minimum lot width.* The closest distance between the side lot lines of a lot. When only two (2) lot lines extend into the Shoreland Area Overlay District, both lot lines shall be considered to be side lot lines.
- J. *Normal high-water line.* With respect to 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 non-forested 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 a part of the river or great pond. Adjacent to tidal waters, the normal high-water line is the upland edge of the coastal wetland.
- IK. *Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland.* These are divided into two classifications:
- JL. *Recent floodplain soils.* The following soil series as described and identified by the National Cooperative Soil Survey:

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

- KM. *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.
- LN. *Riprap.* Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.
- MO. *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 or motorized vehicles.
- NP. *Salt marsh.* Areas along coastal waters (most often along coastal bays) which support salt tolerant species, and where at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widegeon grass, eelgrass, and Sago pondweed.
- OQ. *Salt meadow.* Areas which 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 threesquare occurs in fresher areas.
- PR. *Setback, water.* The nearest horizontal distance from the normal high-water line or upland edge of a coastal wetland to the nearest part of a structure, road, parking space or other regulated object or area.
- QS. *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 at ~~normal high-water~~ the elevation of the normal high-water line or upland edge of a coastal wetland.
- RT. *Shoreland freshwater wetland* – A freshwater wetland that is not a forested wetland and that is ten (10) or more contiguous acres, or less than ten (10) contiguous acres and adjacent to a surface water body, excluding any river, stream, or brook, such that, in a natural state, the combined area is in excess of ten (10) acres.
- SU. *Subsurface sewage disposal system.* A collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 M.R.S.A. § 414, as may be amended, any surface wastewater disposal system licensed under 38 M.R.S.A. § 413(10-A), as may be amended, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S.A. Chapter 13, subchapter 1, as may be amended.

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

UW. *Tributary stream.* A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Chapter, and only applies to that portion of the tributary stream located within the shoreland area of the receiving water body or wetland.

VX. *Upland edge.* The boundary between upland and a shoreland freshwater or coastal wetland.

WY. *Vegetation.* All live trees, shrubs, ground cover and other plants.

XZ. *Volume.* The volume of all portions of a building enclosed by a roof and fixed exterior walls as measured from the exterior faces of the exterior walls and roof.

YAA. *Water body.* Any great pond, river, stream or tidal area.

ZBB. *Water crossing.* Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. Such projects include but are not limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings.

AACC. *Wetland.* A coastal or shoreland freshwater wetland as herein defined.

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Sec. 27-1322. Performance Standards.

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3. Land below the normal high-water line of a water body or upland edge of a coastal or freshwater wetland shall not be included toward calculating minimum lot size.

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ARTICLE XIV. Planning Board Review

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SITE PLAN REVIEW

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Sec. 27-1424. Application.

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- (b) Each application for a site plan permit shall consist of the following:
 - (1) Written statement:

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- n. A description of how the impact of the development activities on coastal wetlands, vernal pools, including significant vernal pools, and significant wildlife habitats will be minimized and what actions will be taken to mitigate any negative impacts on these resources. Information about the impact on freshwater wetlands, if required, shall be provided in accordance with sub-section (4) Supplemental freshwater wetland information. If the proposed activities require a permit or other approval under the state's Natural Resources Protection Act or from the Army Corps of Engineers, any such application and supporting information shall be provided as part of the submission.
- o. A narrative describing how historic resources or archaeological resources will be preserved and incorporated into the development plan. If an identified resource will be removed, altered, or not included as part of the development plan, a statement shall be provided as to why the resource cannot be preserved and the options considered but rejected for including it as part of the development plan.

- (2) Existing conditions plan. An existing conditions plan prepared by a Maine licensed land surveyor and drawn to scale showing the boundaries of the lot of record; any improvements on the lot, including buildings, structures, and paving; the location of buildings and other improvements on the abutting lots (including those across any streets); the topography indicating contours at intervals as required by the Planning Director but in no event more than five (5) feet intervals or less than one (1) foot intervals on the lot and abutting lots (including those across any streets); the vegetation on the lot and abutting lots (including those across any streets); the direction of drainage flow on, under or across the lot; the location of any freshwater or coastal wetlands and vernal pools, including significant vernal pools, any significant wildlife habitat on or adjacent to the lot, the location and description of all historic and archeological resources on the lot, any existing easements; and the location of all utilities on the lot or in adjacent streets.

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Sec. 27-1426. Standards.

The following criteria are to be used by the Planning Board in reviewing applications for site plan permits and shall serve as requirements for approval of such site plans. The site plan shall be approved unless in the judgment of the Planning Board the applicant is not able to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant to demonstrate that the standards have been met. The Planning Board shall consider the following criteria and before granting approval shall determine that:

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- (m) The proposed development will not have an adverse effect on the scenic or natural beauty of the area, aesthetics, historic or archaeological resources sites, or rare and

irreplaceable natural areas or any public rights for physical or visual access to the shoreline. Any historic or archeological resources shall be preserved and incorporated into the development plan in a manner that retains its historic or archaeological value if feasible. If an identified resource will be removed or will be altered in a manner that significantly diminishes its historic or archaeological value, the burden is on the applicant to demonstrate that options for preserving the resource have been explored including consultation with the State Historic Preservation Office and the South Portland Historical Society and that such options are not feasible. In determining the feasibility of preserving the resource, the cost of preserving and maintaining the property and the ability to reasonably incorporate it into the development plan shall be considered. If the resource will be removed, the applicant must demonstrate that reasonable efforts have been made to preserve the resource value or relocate the resource to another location.

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- (w) The proposed development will be carried out so that the impact on vernal pools, including significant vernal pools, and significant wildlife habitats will be avoided to the extent feasible considering cost, existing technology and logistics based on the overall purpose of the project. If any aspect of the project requires a permit or other approval in accordance with the state's Natural Resources Protect Act or a permit from the Army Corps of Engineers, evidence of issuance of such permit or approval shall constitute satisfaction of this standard for that aspect of the project.

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[Fiscal Note: Less than \$1000]

Dated: July 7, 2014