

the final authority as to location.

§ 185-11. Land use requirements.

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulation herein specified for the district in which it is located, unless a variance is granted.

§ 185-12. Nonconformance.

A. Purpose. It is the intent of this chapter to promote land use conformities, except that nonconforming conditions that existed before the effective date of this chapter or amendments thereto shall be allowed to continue, subject to the requirements set forth in this section. Except as otherwise provided in this chapter, a nonconforming condition shall not be permitted to become more nonconforming.

B. General.

- (1) Transfer of ownership. Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this chapter. Any lawful use of buildings, structures, premises, land or parts thereof legally existing at the effective date of this chapter or amendments thereto and not in conformance with the provisions of this chapter shall be considered to be a nonconforming use.
- (2) Repair and maintenance. This chapter allows, with a permit, the normal upkeep and maintenance of nonconforming uses and structures, including repairs or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

C. Nonconforming structures.

- (1) Expansions. All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in § 185-15B(1). A nonconforming structure may be added to or expanded ~~after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is~~ in accordance with Subsection C(1)(a) and (b) below.
 - (a) Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.
 - (b) Notwithstanding Subsection C(1)(a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by § 185-12C(1):

- [1] The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.
- (c) All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by § 185-12C(1) or (1)(a), above:
- [1] For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.
- [2] For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in § 185-12C(1)(b)[1] and (c)[1], above.
- [3] In addition to the limitations in Subsection C(1)(c)[1] and [2], for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in § 185-12C(1)(b)[1] and (c)[1], above.
- (d) An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.
- (2) Foundations. Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the ~~Code Enforcement Department or its designee~~Planning Board, basing its decision on the criteria specified in § 185-12C(3),

Relocation, below.

(3) Relocation.

- (a) A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the ~~Code Enforcement Officer~~Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Waste Water Disposal Rules (Rules),¹ or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.
- (b) In determining whether the building relocation meets the setback to the greatest practical extent, the ~~Code Enforcement Officer~~Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.
- (c) When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the ~~Code Enforcement Officer~~Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with § 185-15S. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

[1] Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

[2] Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation, which may consist of grasses, shrubs, trees, or a combination thereof.

(4) Reconstruction or replacement.

- (a) Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal may be reconstructed or replaced, provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as

1. Editor's Note: See 10-144 CMR Ch. 241, Maine Subsurface Waste Water Disposal Rules.

determined by the ~~Code Enforcement Officer~~ Planning Board in accordance with the purposes of this chapter. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback, it shall not be any larger than the original structure, except as allowed pursuant to § 185-12C(1) above, as determined by the nonconforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with § 185-12C(3) above.

- (b) Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.
 - (c) In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent, the ~~Code Enforcement Officer~~ Planning Board shall consider, in addition to the criteria in § 185-12C(3) above, the physical condition and type of foundation present, if any.
- (5) Change of use of a nonconforming structure.
- (a) The use of a nonconforming structure may not be changed to another use, except for a conforming use, unless the ~~Code Enforcement Officer~~ Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body or wetland or on the subject or adjacent properties and resources than the existing use.
 - (b) In determining that no greater adverse impact will occur, the ~~Code Enforcement Officer~~ Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and functionally water-dependent uses.

D. Nonconforming uses.

- (1) Expansions. Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the ~~Code Enforcement Officer~~ Planning Board, be expanded within existing residential structures or within expansions of such structures as permitted in § 185-12C(1) above.
- (2) Resumption prohibited. A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year or which is superseded by a conforming use may not again be devoted to a nonconforming use except that the ~~Code Enforcement Officer~~ Planning Board may, for good cause shown by the applicant, grant up to a one-year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure, provided that the structure has been used or maintained for residential purposes during the

preceding five-year period.

- (3) Change of use. An existing nonconforming use may be changed to another nonconforming use, provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the ~~Code Enforcement Officer~~Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in § 185-12C(5) above.

E. Nonconforming lots.

- (1) Nonconforming lots. A nonconforming lot of record as of the effective date of this chapter or amendment thereto may be built upon without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this chapter except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
- (2) Contiguous built lots.
 - (a) If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this chapter, if all or part of the lots do not meet the dimensional requirements of this chapter, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. §§ 4807-A through 4807-D) and the State of Maine Subsurface Waste Water Disposal Rules are complied with.
 - (b) If two or more principal uses or structures existed on a single lot of record on the effective date of this chapter, each may be sold as a separate lot, provided that the sale(s) complies with above-referenced law and rules. When such lots are divided, each lot thus created must be as conforming as possible to the dimensional requirements of this chapter.
- (3) Contiguous lots, vacant or partially built. If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this chapter, if any of these lots do not individually meet the dimensional requirements of this chapter or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements. This provision shall not apply to two or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on the effective date of this chapter and recorded in the Registry of Deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Waste Water Disposal Rules, and:
 - (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - (b) Any lots that do not meet the frontage and lot size requirements of Subsection E(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

§ 185-13. Establishment of districts.

- A. Resource Protection District. The Resource Protection District includes areas in which development could adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the

shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the General Development District need not be included within the Resource Protection District:

- (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Maine Department of Environmental Protection as of May 1, 2006. For the purposes of this subsection, "wetlands associated with great ponds and rivers" shall mean areas characterized by nonforested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D)]**
- (2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.
- (3) Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- (4) Areas of two or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

NOTE: These areas usually consist of forested wetlands abutting water bodies and nonforested wetlands.

- (5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, which are subject to severe erosion or mass movement.
 - (6) Other land areas designated as resource protection on the Windham Official Land Use Map. **[Added 10-12-2021]**
- B. Limited Residential District. The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in General Development District.
- C. General Development District. The General Development District includes the following types of areas:
- (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - (a) Areas devoted to manufacturing, fabrication, or other industrial activities;
 - (b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and

- (c) Areas devoted to intensive recreational development and activities, such as, but not limited to, amusement parks, race tracks and fairgrounds.
 - (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses. Portions of the General Development District may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.
 - (3) In areas adjacent to great ponds classified GPA and adjacent to rivers flowing to great ponds classified GPA, the designation of an area as a General Development District shall be based upon uses existing at the time of adoption of this chapter. There shall be no newly established General Development Districts or expansions in area of existing General Development Districts adjacent to great ponds classified GPA, and adjacent to rivers that flow to great ponds classified GPA.
- D. Stream Protection District. The Stream Protection District includes all land areas within 100 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within 250 feet, horizontal distance, of the normal high-water line of a great pond or river or within 250 feet, horizontal distance, of the upland edge of a freshwater wetland, or as shown on the Official Land Use Map. Where a stream and its associated shoreland area is located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland. **[Amended 10-12-2021]**

§ 185-14. Table of Land Uses. [Amended 10-12-2021; 6-16-2022 by Order No. 22-108; 12-12-2024 by Order No. 24-173]

All land use activities, as indicated in Table 1, Land Uses in the shoreland zone, shall conform with all of the applicable land use standards in § 185-15. The district designation for a particular site shall be determined from the Official Land Use Map.

Key to Table 1:

YES: Allowed (no permit required but the use must comply with all applicable land use standards)

NO: Prohibited

CEO: Allowed with permit issued by the Code Enforcement Officer

LPI: Allowed with permit issued by the local Plumbing Inspector

PB: Allowed with permit issued by the Planning Board

PB-SP: Allowed with site plan approval issued by the Planning Board in accordance with Article 8 of Chapter 120, Land Use

Abbreviations:

RP: Resource Protection

LR: Limited Residential

GD: General Development

SP: Stream Protection

Table 1. Land Uses in the Shoreland Zone

Land Uses	Districts			
	SP	RP	LR	GD
Agriculture	YES	PB-SP	YES	YES
Aquaculture	PB-SP	PB-SP	PB-SP	YES
Campgrounds	NO	NO ⁶	PB-SP	PB-SP
Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO ¹	YES CEO	YES CEO
Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI
Emergency operations	YES	YES	YES	YES
Essential services	PB-SP ⁵	PB-SP ⁵	PB-SP	PB-SP
A. Roadside distribution lines (34.5kV and lower)	CEO ⁵	CEO ⁵	YES ¹¹	YES ¹¹
B. Nonroadside or cross-country distribution lines involving 10 poles or fewer in the shoreland zone	CEO ⁵	CEO ⁵	CEO	CEO
C. Nonroadside or cross-country distribution lines involving 11 or more poles in the shoreland zone	PB ⁵	PB ⁵	PB	PB
Filling and earthmoving of less than 10 cubic yards	CEO	CEO	YES	YES
Filling and earthmoving of more than 10 cubic yards	CEO	PB	CEO	CEO
Fire prevention activities	YES	YES	YES	YES
Home occupations	CEO	CEO	CEO	CEO
Individual, private campsites	CEO	CEO	CEO	CEO
Marijuana businesses				
A. Medical marijuana registered caregiver/medical marijuana registered caregiver (home occupation)	NO	NO	NO	CEO
B. Other marijuana businesses	NO	NO	NO	NO
Marinas	PB-SP	NO	PB-SP	PB-SP
Mineral exploration	NO	YES ²	YES ²	YES ²
Mineral extraction, including sand and gravel extraction	NO	PB-SP ¹³	PB-SP ¹³	PB-SP ¹³
Motorized vehicular traffic on existing roads and trails	YES	YES	YES	YES
Nonintensive recreational uses not requiring structures, such as hunting, fishing and hiking	YES	YES	YES	YES
Parking facilities	NO	PB-SP	PB-SP	PB-SP

Table 1. Land Uses in the Shoreland Zone				
Land Uses	Districts			
	SP	RP	LR	GD
Permanent piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland	PB-SP	PB-SP	PB-SP	PB-SP
Principal structures and uses				
A. One- and two-family residential, including driveways	PB- SP ⁴	PB- SP ⁹	CEO	CEO
B. Multifamily dwelling	NO	NO	PB-SP	PB-SP
C. Commercial	NO	NO ¹⁰	NO ¹⁰	PB-SP
D. Industrial	NO	NO	NO	PB-SP
E. Governmental and institutional	NO	NO	PB-SP	PB-SP ⁸
F. Small nonresidential facilities for educational, scientific, or nature interpretation purposes	PB- SP ⁴	PB- SP	CEO	CEO
Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI
Structures accessory to allowed uses	CEO PB ⁴	CEO PB	CEO	CEO
Public and private recreational areas involving minimal structural development	PB-SP	PB-SP	PB-SP	PB-SP
Road and driveway construction	CEO	PB-SP ⁷	CEO	CEO
Service drops, as defined, to allowed uses	YES	YES	YES	YES
Signs	CEO	CEO	CEO	CEO
Soil and water conservation practices	YES	YES	YES	YES
Structures accessory to allowed uses	CEO	CEO	CEO	CEO
Surveying and resource analyses	YES	YES	YES	YES
Uses similar to allowed uses	CEO	CEO	CEO	CEO
Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
Uses similar to uses requiring a PB permit	PB	PB	PB	PB
Uses similar to permitted uses requiring PB site plan approval	PB-SP	PB-SP	PB-SP	PB-SP
Wildlife management practices	YES	YES	YES	YES
Wireless telecommunications facilities	NO	NO	NO	PB ¹⁴

1 In RP not allowed within 75 feet, horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

2 Requires permit from the CEO if more than 100 square feet of surface area, in total, is disturbed.

- 3 In RP not permitted in areas so designated because of wildlife value.
- 4 Provided that a variance from the setback requirements is obtained from the Board of Appeals.
- 5 See further restrictions in § 185-15L.
- 6 Except when area is zoned for RP due to floodplain criteria, in which case a permit is required from the PB.
- 7 Except as provided in § 185-15H(43), and except when the total amount of disturbed area will be 25,000 square feet or less, in which case only a Planning Board permit is required.
- 8 Correction facilities are a special exception in the General Development (GD) District requiring both Planning Board and Board of Appeals approval. Correction facilities must meet the performance standards listed under Article 5, § 120-516, of Chapter 120, Land Use.
- 9 Single-family residential structures may be allowed by special exception only according to the provisions of § 185-16G, Special exceptions. Two-family residential structures prohibited.
- 10 Except for commercial uses otherwise listed in this table, such as marinas and campgrounds, that are allowed in the respective district.
- 11 Permit not required, but must file a written notice of intent to construct with CEO.
- 13 Mineral extraction must also receive site plan review and approval under Article 6 of Chapter 120, Land Use
- 14 Wireless telecommunications facilities also require Planning Board review and approval under Chapter 240.

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. § 480-C, if the activity occurs in, on, over or adjacent to any freshwater wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.

§ 185-15. Land use standards. [Amended 10-12-2021; 6-16-2022 by Order No. 22-108; 12-12-2024 by Order No. 24-173]

All land use activities within the shoreland zone shall conform with the following provisions, if applicable. Site plan review may also be applicable to development in the shoreland zone. Please refer to Chapter 120, Land Use, Article 8, Site Plan Review, of the Town Code.

A. Minimum lot standards.

(1) Requirements. Lots shall meet or exceed the following minimum requirements:

(a) Minimum lot size.

§ 185-15P(2). Section 185-15P(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

(3) Distances greater than 100 feet.

- (a) At distances greater than 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten-year period, selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.
- (b) In no event shall cleared openings for any purpose, including, but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed, in the aggregate, 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the shoreland zone, including the buffer area, but shall not apply to the General Development District.
- (4) Existing openings. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this chapter.
- (5) Reverted fields. Fields and other cleared openings which have reverted to primary shrubs, trees, or other woody vegetation shall be regulated under the provisions of § 185-15P.

Q. Hazard trees, storm-damaged trees, and dead tree removal.

- (1) Hazard trees in the shoreland zone may be removed ~~without~~ upon receipt of a permit ~~after consultation with~~ from the Code Enforcement Officer, which may be issued if the following requirements are met:
 - (a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than 250 square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four feet in height, and be no less than two inches in diameter. Stumps may not be removed.
 - (b) Outside of the shoreline buffer, when the removal of hazard trees exceeds 40% of the volume of trees four inches or more in diameter, measured at 4.5 feet above ground level in any ten-year period, and/or results in cleared openings exceeding 25% of the lot area within the shoreland zone, or 10,000 square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two inches in diameter, measured at 4.5 feet above the ground level.
 - (c) The removal of standing dead trees, resulting from natural causes, is permissible without

the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision, "dead trees" are those trees that contain no foliage during the growing season.

- (d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
 - (e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight inches in diameter measured at 4.5 feet above the ground level.
- (2) Storm-damaged trees in the shoreland zone may be removed ~~without~~ upon receipt of a permit ~~after consultation with~~ from the Code Enforcement Officer, which may be issued if the following requirements are met:
- (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than 250 square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - [1] The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - [2] Stumps from the storm-damaged trees may not be removed;
 - [3] Limbs damaged from a storm event may be pruned even if they extend beyond the bottom 1/3 of the tree; and
 - [4] If, after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every 80 square feet of lost canopy.
 - (b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four inches or more in diameter, measured at 4.5 feet above the ground level in any ten-year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.
- R. Exemptions to clearing and vegetation removal requirements. The following activities are exempt from the clearing and vegetation removal standards set forth in § 185-15P, provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:
- (1) The removal of vegetation that occurs at least once every two years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two years, reverts back to primarily woody vegetation, the requirements of § 185-15P apply;
 - (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of § 185-15B are not applicable;