

Office of Policy and Legal Analysis

Date: April 21, 2021
To: Joint Standing Committee on Environment and Natural Resources
From: Deirdre Schneider, Legislative Analyst
Re: LD 1161, An Act Concerning Marina-based Restaurants in the Shoreland Zone

Summary

This bill amends the definition of "functionally water-dependent uses" under the shoreland zoning laws by adding marina-based restaurants as one of the uses. This bill defines "marina-based restaurant" as a restaurant establishment located on marina premises that is an accessory to the primary use of the premises as a marina.

Application of existing law and rules

Under the chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, functionally water-dependent uses are excluded from the following:

- Setback requirements for expansions of non-conforming structures; and
- Setback requirements for new principal and accessory structures.

The rules define accessory structure or use as follows:

Accessory structure or use - a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

For reference a principal use is defined as a use other than one which is wholly incidental or accessory to another use on the same lot.

The chapter 1000 rules also specify that all uses must comply with the setback, minimum lot size and shore frontage requirements and establish minimum lot standards (lot size and frontage) for principal structures. If a marina-based restaurant is defined as an accessory use, the restaurant would be exempt from meeting the minimum lot size and shore frontage requirement, as well as the setback requirements.

List of People that Submitted Written Testimony and/or Spoke at the Hearing

Proponents: Representative Cebra (Sponsor); Stacey Keefer, ME Marina Trades Association; Drew Lyman, Lyman-Morse Boatbuilding; and Jim Allen

Opponents: Nick Livesay, DEP; Nick Bennett, NRCM; Susan Gallo, Maine Lakes; Dale Jellison, Green Lake Association; Deborah Cayer; Eliza Donoghue, ME Audubon; Peter and June Folger; Shelley Hall; Wells Jacobson; Evan Jones;; Roy Lambert; Lydia Landsberg; Andrea Lasman; Ethan Lowell; Carlton Mills; Marilyn & Thomas Nystrom; Grace Olsen, Lakes Environmental Association; Karena Poonen;

Carol Rothenberg; Orrin Shane; Priscilla Treadwell; James Turpin; Justin Ward; Peter Whitchurch; Lisa Willey; Michele Windsor; and Martina Witts

Neither for nor against: None

Notes/Issues/Suggested Amendment is Testimony

While the DEP, in its testimony opposed the bill, the testimony suggests if the committee is to move forward with allowing marina-based restaurant to be built without meeting setback, minimum lot size and shore frontage requirements it may want to consider doing so by creating a restaurant specific section instead of changing the definition of functionally water-dependent. Provided below are examples from existing statutory provisions that allow municipalities to adopt ordinances that permit certain structures/uses to be constructed even if they cannot meet the resource setback requirements.

Examples of exemptions in existing law

38 MRSA § 439-A(4-B & 4-C)

4-B. Exemption from setback requirements for decks over rivers within a downtown revitalization project. In accordance with the provisions of this subsection, a municipality may adopt an ordinance that exempts a deck from the water and wetland setback requirements otherwise applicable under this section.

A. Notwithstanding subsection 4, a municipality may adopt an ordinance pursuant to this subsection that exempts a deck from the otherwise applicable water or wetland setbacks if the following requirements are met:

- (1) The deck does not exceed 700 square feet in area;
- (2) The deck is cantilevered over a segment of a river that is located within the boundaries of a downtown revitalization project; and
- (3) The deck is attached to or accessory to a use in a structure that was constructed prior to 1971 and is located within a downtown revitalization project.

B. A downtown revitalization project under this subsection must be defined in a project plan approved by the legislative body of the municipality and may include the revitalization of buildings formerly used as mills that do not meet the water or wetland setback requirements in subsection 4.

C. Except for the water and wetland setback requirements in subsection 4, a deck that meets the requirements of this subsection must meet all other state and local permit requirements and comply with all other applicable rules.

D. A deck exempt under this subsection may be either privately or publicly owned and maintained.

4-C. Exemption from setback requirements for walkways and trails over rivers within a downtown revitalization project. In accordance with the provisions of this subsection, a municipality may adopt an ordinance that exempts pedestrian walkways and trails from the water and wetland setback requirements otherwise applicable under this section.

A. Notwithstanding subsection 4, a municipality may adopt an ordinance pursuant to this subsection that exempts a pedestrian walkway or trail from the otherwise applicable water or wetland setbacks if the following requirements are met:

- (1) The walkway or trail is adjacent to a segment of a river that is located within the boundaries of a downtown revitalization project;
- (2) If cantilevered over a segment of river, the walkway or trail does not extend over the river more than 10 feet from the normal high-water line;
- (3) If cantilevered over a segment of river, the walkway or trail is attached to a structure that was constructed prior to 1971 and is located within a downtown revitalization project; and
- (4) If the walkway or trail is cantilevered over a segment of river, the municipal planning board has determined there is no other practical means to construct the walkway or trail without cantilevering over that segment of the river. If there are no other practical means to construct the walkway or trail, approaches to the cantilevered walkway or trail may also cantilever off adjacent retaining walls but no more than is necessary to access the cantilevered walkway or trail.

B. A downtown revitalization project under this subsection must be defined in a project plan approved by the legislative body of the municipality and may include the revitalization of buildings formerly used as mills that do not meet the water or wetland setback requirements in subsection 4.

C. Except for the water and wetland setback requirements in subsection 4, a walkway or trail that meets the requirements of this subsection must meet all other state and local permit requirements and comply with all other applicable rules.

D. A walkway or trail exempt under this subsection may be either privately or publicly owned and maintained.

Fiscal Impact

- Not yet received

Information requests

At the public hearing there were several information requests from members related to this proposal and include:

- Information on the economic impacts of restaurants.
 - Information provided by Stacey Keefe, ME Marine Trades Association- The AMI Marina Calculator specifies that for every \$1 spent at a marina restaurant in Maine, there is a \$3.68 return in regional economic impacts (full document provided is attached).
- How many marina-based restaurants currently exist, how many additional restaurants could be built?
 - According to information provided by Stacey Keefe, ME Marine Trades Association, as of 2019 there were 104 establishments categorized as marinas in Maine (however, it is not clear if this includes municipal docks and boat builders who also have marina facilities).

There are approximately 18 (14 coastal; 4 inland) restaurants located where the primary business is a marina (unclear in some cases if a marina and restaurant are technically part of the same property or if they are separate on a tax map – this may mean there approximately 10-20 more location that include a restaurant and dockage, but a marina may not be the primary business.

Information provided by Stacey Keefe

Definition NAICS CODE 713930 **MARINAS**: This industry comprises establishments, commonly known as marinas, engaged in operating docking and/or storage facilities for pleasure craft owners, with or without one or more related activities, such as retailing fuel and marine supplies; and repairing, maintaining, or renting pleasure boats.

Includes yacht clubs, boating clubs with marinas, marine basins, sailing clubs with marinas, and yacht basins.

Data run from Maine.gov Center for Workforce Research and Information

NAICS Code 713930

- 104 establishments in 2019
- average employment 998
- Over \$42.6 Million wages

It is not obvious if this number includes municipal docks and does not likely include boat builders who also have a marina facility

Estimated number of businesses with primary use as marinas, but also include a restaurant: 18

Coastal -approximately 14

Inland Marina -approximately 4

In some cases, it is difficult to tell without more detailed research if a marina and restaurant are technically part of the same property or if they are separate on a tax map. Parking is often shared. There are probably 10-20 more locations that may include a restaurant and dockage, but a marina may not be the primary business. This is an estimate only.

ECONOMIC IMPACT DATA from the Association of Marina Industries

From the [AMI marina calculator](#) for every \$1 spent at a marina restaurant in Maine; there is a \$3.68 return in regional economic impact.

DiMillos - Portland

Lyman-Morse at Wayferer - Camden

Dolphin Marina & Restaurant - Harpswell

Dysarts Great Harbor Marina - SW Harbor

Paul's Marina - Brunswick

Derecktor Robinhood - Georgetown

Diamonds Edge – Great Diamond Island

Dockside Grill at Handyboat - Falmouth

Fore Points Marina Bar -Portland

Sunset Grill at Sunset Marina -South Portland

North 43 Bistro at Port Harbor -South Portland

Snow Squall in South Port Marina -South Portland

Rockland Landings Marina -Rockland

Carousel Marina - Boothbay

Naples Marina – Naples

Kezar Lake Marina -Lovell

Kettle Cove Marina -South Casco

Great Pond Marina – Belgrade