

De Minimis Structure Position Discrepancies, defined

PART II. STRUCTURE POSITION DISCREPANCIES

§669-11 De minimis structure position discrepancies, defined. For the purposes of this part, “de minimis structure position discrepancy” means:

(1) For commercial property, industrial property, and multi-unit residential property, 0.25 feet;

(2) For all other residential property, 0.5 feet;

(3) For agricultural and rural property, 0.75 feet; and

(4) For conservation property, 1.5 feet;

between the location of an improvement legally constructed along what was reasonably believed to be the boundary line and the actual location of the boundary line based on the most recent survey. [L 1997, c 131, pt of §2; am L 1999, c 185, §2]

Consequences

§669-12 Consequences.

(1) A de minimis structure position discrepancy shall not be considered an encroachment or a basis for a zoning violation;

(2) No de minimis structure position discrepancy authorized under this part shall be considered as a basis for any claim of adverse possession of land. If the wall or other improvement that is affected by the discrepancy is removed or substantially damaged or destroyed, the replacement improvement shall be constructed to comply with the most recent survey available at the time of construction of the improvement;

(3) Responsibility for maintenance and repair of an improvement within a de minimis structure position discrepancy shall be borne by the property owner who constructed the improvement or the property owner’s successor in interest;

(4) Liability for any claims for injuries or damages to persons or property arising out of, or in connection with, an improvement within a de minimis structure position discrepancy shall be borne by the property owner who constructed the improvement or the property owner’s successor in interest; and

(5) In the event that the property owner who constructed the improvement within a de minimis structure position discrepancy is not readily identifiable, then for purposes of this part, the owner of the improvement shall be determined to be the owner of the property upon which the improvement is substantially located. [L 1997, c 131, pt of §2; am L 1999, c 185, §3]

Restrictions as to owner of property

[§669-13] Restrictions as to owner of property. This part shall not apply to any de minimis structure position discrepancy on public lands, as defined in section 171-2, or to such encroaching improvements incident to shoreline boundaries. If real property subject to this section is owned by a county, any improvement within a de minimis structure position discrepancy shall be removed at the expense of the property owner who constructed the improvement, or the property owner's successor in interest, upon notice, in accordance with the respective county procedures or ordinances. [L 1997, c 131, pt of §2]