

ARTICLE 5 NONCONFORMANCE

Section 1. Basic Requirement

All buildings, whether being erected, demolished, altered, or repaired, all parcels of land, and the uses of all buildings and land in the Town must be in conformance with the provisions of this Ordinance, except those which by the provisions of this Article become nonconforming. All buildings, parcels of land, and the uses thereof which are not in conformance with the provisions of this Ordinance are prohibited.

Section 2. Definitions

Nonconformities are those buildings, parcels of land, and the uses thereof which fail to meet the current requirements of this Ordinance but which were lawful at the time of the original adoption or subsequent amendment of this Ordinance and which are allowed to continue as lawful pursuant to the provisions of this Article. Specifically:

A. Nonconforming lot

A nonconforming lot is a single lot of record which, at the time of adoption or amendment of this Ordinance, does not meet the minimum net lot area, net lot area per dwelling unit, maximum lot coverage, minimum lot width, or other similar lot requirements of the District in which it is located. It is allowed solely because it was in lawful existence as of June 17, 1963, or as of the date a subsequent amendment rendering the lot nonconforming was adopted, as evidenced by a deed on record on or before that date in the York County Registry of Deeds.

B. Nonconforming building

A nonconforming building or structure is one that does not meet the minimum setback, maximum height, maximum lot coverage, or similar building requirements of the district in which it is located. It is allowed solely because it was in lawful existence as of June 17, 1963, or as of the date a subsequent amendment rendering the building nonconforming took effect.

C. Nonconforming use

A nonconforming use is a use of premises that is not a permitted or special exception use in the district in which it is located, but which is allowed to remain solely because it was in lawful existence as of June 17, 1963, or as of the date a subsequent amendment rendering the use nonconforming took effect.

Section 3. Nonconforming Lots

A. Vacant lots

- (1) A vacant nonconforming lot may be built upon provided:
 - (a) that such lot is in separate ownership and not contiguous with any other vacant lot in the same ownership, and
 - (b) that all provisions of this Ordinance, except net lot area and lot width, can be met.

- (2) If two or more vacant, contiguous lots or parcels are in single or joint ownership of record at the time of adoption or amendment of this Ordinance, and if these lots do not individually meet the space and bulk requirements of this Ordinance, the lots shall be combined to the extent necessary to meet the space and bulk standards, except:
 - (a) where the contiguous lots front onto different streets; or
 - (b) where each lot is not less than 75 feet wide, (and has at least 100' of shore frontage if located in shoreland area overlay district) and no such lot or lots were or have been adjoined by other vacant land under the same ownership on or subsequent to the time of adoption or subsequent amendment of this Ordinance.
- (3) Notwithstanding any provisions of this subsection A any lot shown on a plan recorded in the York County Registry of Deeds and approved by the Planning Board in compliance with all requirements of this Ordinance in effect at the time of such approval may be built upon despite being nonconforming as to minimum net lot area, minimum lot width, or minimum shoreland frontages and shoreland setbacks, provided all other requirements of this Ordinance are satisfied.

B. Lots with buildings

- (1) A structure built on a legally nonconforming lot may be repaired, maintained or improved, may be enlarged, and an accessory building may be built upon the lot in conformity with the applicable space and bulk requirements other than minimum net lot area or minimum lot width.
- (2) If two or more contiguous lots or parcels are in single or joint ownership of record at the time of adoption or amendment of this Ordinance, if all or part of the lots do not meet the applicable space and bulk requirements, and if a principal use exists on at least one of the lots, or if the lots were legally created and recorded in compliance with Section 3A(3) above, the nonconforming lots may be conveyed separately or together, providing all other State law and local Ordinance requirements are met.

C. Division of Nonconforming Lot

No division of any lot may be made which violates any minimum space or bulk requirements of this Ordinance or which makes worse an existing nonconforming situation.

Section 4. Nonconforming Uses

A. Continuance

The use of land, building or structure, lawful at the time of adoption, or subsequent amendment of this Ordinance, may continue although such use does not conform to the provisions of this Ordinance, except as provided in subsection C below.

B. Resumption

Whenever a nonconforming use of land and/or structure is superseded by a permitted use, such structure and/or land shall thereafter conform to the provisions of this Ordinance and the nonconforming use may not thereafter be resumed.

C. Discontinuance

A nonconforming use which is discontinued in fact for a continuous period of three (3) years, without regard to intent to abandon, may not be resumed, except as provided in Section 5B below. The uses of the land or building shall thereafter conform to the provisions of this Ordinance.

D. Expansion of Use

A nonconforming use, including a nonconforming outdoor use of land, shall not be extended or expanded in area or function.

Section 5. Nonconforming Buildings or Structures

A. Maintenance and Enlargement

A building in lawful existence as of the date of adoption of this Ordinance or subsequent amendment that does not meet the height or setback requirements of this Ordinance may be repaired, maintained, and improved. It may be enlarged and/or accessory buildings may be added to the site without a variance, provided that:

- (1) the enlargement or accessory building itself meets the height requirements of the district in which it is located;
- (2) the enlargement or accessory building in combination with the existing building(s) does not exceed the maximum lot coverage of the district; and
- (3) the enlargement or accessory building itself meets the setback and green perimeter strip requirements of the district, except that after the effective date of this amendment, June 15, 1994, if any portion of a structure is less than the required setback(s) specified in Article 8, Section 16.D., the structure shall not be expanded, during its lifetime, in the direction(s) of the nonconformity by more than thirty (30) percent of the structure's gross floor area or volume as of the effective date of this amendment.

*Note: Construction of a foundation beneath an existing structure shall not be considered an enlargement of the structure, provided that the foundation does not cause the structure to be elevated by more than three (3) additional feet.

B. Reconstruction

- (1) Any nonconforming building, or a building containing a nonconforming use, which is hereafter damaged or destroyed by fire, flood, lightning, wind, structural failure or other accidental cause, may be restored or reconstructed in conformity with its original dimensions, and used as before, within three (3) years of the date of such damage or destruction; provided, however, that such reconstruction and use shall not be more nonconforming than the prior nonconforming building or use. Nothing in this section

shall prevent the demolition of the remains of any building so damaged or destroyed.

- (2) Notwithstanding paragraph (1) above, in the Coastal Residential District, nonconforming business establishments, which are damaged by fire, hurricane, or other force majeure, or which are proposed to be remodeled to modernize, may be rebuilt or remodeled only within the location of their existing foundation or building footprint and at or below their original height. To retain its nonconforming status, construction or reconstruction must begin within two (2) years after destruction or other injury or damage to the previously existing nonconforming business establishment and must be completed within five (5) years from the date of such destruction, damage, or other injury; or, in the case of remodeling with the intention of modernizing the facility, such remodeling must be completed within three (3) years after remodeling begins; provided that all work performed pursuant to this paragraph shall comply with all other applicable requirements of this Ordinance.

Section 6. Nonconformities in the Branch Brook Aquifer Protection (BB) District

- A. Extension or expansion of nonconforming uses in the BB District is not permissible by variance or otherwise, unless provided for herein:
 - (1) Expansion of a nonconforming one-family home which increases discharge to a wastewater disposal system in Zone A requires the approval of the Board of Appeals. Approval shall be granted only if the applicant shows that the expansion:
 - (a) meets the criteria of review listed in Article 7, Section 3(C), and
 - (b) the expansion will not create a discharge which exceeds the design capacity of the wastewater disposal system.
 - (2) Expansion of a nonconforming commercial or industrial facility within the district requires the approval of the Board of Appeals. Approval shall be granted only if the expansion:
 - (a) meets the criteria of review listed in Article 7, Section 3(C);
 - (b) will not create a discharge which exceeds the design capacity of the wastewater disposal system; and
 - (c) is limited to the lot of record existing at the time of the adoption of the BB district on which the use is located.
- B. A nonconforming use of a structure, building, or property may be changed to another nonconforming use by appeal to the Board of Appeals if the applicant can prove that the proposed new use will be less detrimental to the BB District than the prior use.

- C. Any single lot of record existing legally on the effective date of the BB District and lying totally within Zone A may have one one-family dwelling and one wastewater disposal system located on it providing the landowner secures a use variance from the Board of Appeals, and providing this use variance conforms with all other applicable local and State laws and regulations. The applicant must produce proof from the Registry of Deeds that the lot existed and was recorded prior to the effective date of the amendment creating the BB District.
- D. Nonconforming uses of "limited" or "restricted" use herbicides or pesticides require a permit from the Hazardous Materials Control Board. The applicant shall submit the information required in Section 2G of Article 8 to the Hazardous Materials Control Board. The Hazardous Materials Control Board may approve the permit with conditions if conditions are necessary to ensure that continued use will not cause a violation of the performance standard for pollution levels.

Section 6.A Nonconformities in the Resource Protection Zone

Any single-family structure in the Resource Protection District that is nonconforming as to the maximum ground floor area established by Article 7, Section 1.(8)(e) due to its lawful existence prior to the enactment of that section may be expanded vertically, provided that such expansion does not exceed the maximum height allowed in that district. No increase in the footprint of such a structure shall be allowed.

Section 7. Nonconformities in the Shoreland Zone

- A. **Purpose.** It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 7. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

- B. **General**

- (1) **Transfer of Ownership.** Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
- (2) **Repair and Maintenance.** This Ordinance allows the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

- C. **Non-conforming Structures**

- (1) **Expansions.** A non-conforming 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 non-conformity of the structure and is in accordance with Section 6.A above and subparagraphs (a) and (b) below.
 - (a) After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or

volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 7(C)(3), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

- (b) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming 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 Planning Board (or Site Plan Review Board in the case of a site plan application), basing its decision on the criteria specified in Section 7(C)(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 7(C)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
- (2) **Relocation.** A non-conforming 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 shoreland setback requirements to the greatest practical extent as determined by the Applicable Review 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 Wastewater Disposal Rules (Rules), 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 non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Applicable Review 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. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Applicable Review Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, minimum 2" dbh, 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 re-established. 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.

- (b) 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.
- (3) **Reconstruction or Replacement.** Any non-conforming 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 eighteen (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 determined by the Applicable Review Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. 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 Section 7(C)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume 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 Section 7(C)(2) above.

Any non-conforming 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.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the applicable Review Board shall consider, in addition to the criteria in Section 7(C)(2) above, the physical condition and type of foundation present, if any.

- (4) **Change of Use of a Non-conforming Structure.** The use of a non-conforming structure may not be changed to another use unless the Planning Board (or Site Review Board if change is part of a site plan application), after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the applicable review 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 commercial fishing and maritime activities, and other functionally water-dependent uses.

D. Non-conforming Uses

- (1) **Expansions.** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 7(C)(1)(a) above.
- (2) **Resumption Prohibited.** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Applicable Review 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 residential use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
- (3) **Change of Use.** An existing non-conforming use may be changed to another non-conforming 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 **Board of Appeals**. The determination of no greater adverse impact shall be made according to criteria listed in Section 7(C)(4) above.

E. Non-conforming Lots

- (1) **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Ordinance 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 Ordinance 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:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

- (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 Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance 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 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person

or persons on the effective date of this Ordinance 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 Wastewater Disposal Rules; and each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area.

Section 8. Transfer of Ownership

Ownership of nonconforming lots, uses, and/or buildings as defined in this Ordinance may be transferred without loss of their lawful but nonconforming status.

Section 9. Changes in Nonconforming Lots, Structures, and Uses

A nonconforming aspect of a lot or building may be changed if the Code Enforcement Officer determines that it is no more nonconforming than the existing situation. In the case of a change in a nonconforming use, the Board of Appeals shall make the determination of whether the change is to a use that is less or no more nonconforming than the existing situation. In making its determination, the Board of Appeals shall apply the standards of Article 7, Section 1A.