

## **ARTICLE 16: NONCONFORMING LOTS, USES, BUILDINGS, & STRUCTURES**

### **Section 16.1. PURPOSE**

The purpose of this Article is to regulate nonconforming lots, uses, and structures as defined in this Ordinance such that they can be developed, maintained, or changed to other less non-conforming or to conforming uses.

### **Section 16.2. GENERAL**

- A. **Transfer of Ownership:** Nonconforming 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.
- B. **Repair and Maintenance:** This Ordinance allows, without a permit, the normal upkeep and maintenance of nonconforming 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 nonconforming use or structure as federal, state, or local building and safety codes may require.

### **Section 16.3. NONCONFORMING LOTS**

- A. **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 minimum lot size, lot frontage and shore frontage can be met. Variances relating to setback or other requirements not involving minimum lot size, lot width or shore frontage shall be obtained by action of the Board of Appeals. *[Note: The Town recognizes March 6, 1976 as the effective date of the establishment of legally nonconforming lots]*
- B. **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 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 Wastewater Disposal Rules are complied with.
- C. **Functional Divisions:** If two or more principal 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.
- D. **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.

#### **Section 16.4. NONCONFORMING USES, BUILDINGS OR STRUCTURES**

- A. **Repairs and alterations.** A nonconforming building or structure may be repaired, altered, improved, or reconstructed. A nonconforming building or structure may be added to or expanded within the established setbacks for the underlying district after obtaining a permit from the same permitting authority as that for a new structure. The repair, alteration, improvement or reconstruction of a building or structure located within an aquifer protection area shall be subject to the provisions of Article 10.
- B. **Rebuilding.** A nonconforming building or structure which is damaged or destroyed by fire, explosion, or act of God may be rebuilt at any time. At the option of the owner, the building or structure may be rebuilt upon the original footprint of the destroyed building or structure. Otherwise, the rebuilt structure must be constructed within the established setbacks for the underlying district.
- C. **Expansion of nonconforming use other than residential.** The number of square feet of floor space area devoted to a nonconforming use may be increased upon application to the Board of Appeals, but only if the Board finds that the proposed expansion of the nonconforming use will have no greater adverse effect upon other property in the same district and neighborhood and that the granting of such approval will not substantially depart from the intended purpose of this chapter. The expansion of a nonconforming use located within an aquifer protection area shall be subject to the provisions of Article 10. In making its determination of no greater adverse impact, Board shall consider the following factors:
- (1) The hours of operation are decreased or not increased.
  - (2) Undesirable effects such as noise, glare, vibration, smoke, dust, odor, or fire hazard are decreased.
  - (3) Hazardous traffic conditions are minimized, and the amount of traffic is decreased or not increased.
  - (4) The appearance of the property from public ways and abutting properties is improved and the value of adjacent properties will not be adversely affected.
  - (5) Unsanitary conditions as a result of sewage disposal, air emissions, or other aspects of its design or operation will not be created.
- D. **Expansion of nonconforming residential building or structure.** A nonconforming residential building or structure may be expanded after obtaining a permit from the same permitting authority that issues permits for a new structure, provided that the expansion does not increase the nonconformity of the structure or expand the area of

a nonconforming use. The expansion of a nonconforming residential use shall be subject to the provisions of Article 9 Shoreland Zoning and Article 10, Aquifer Protection, where applicable.

E. **Change of use.** A nonconforming use of a building, structure, or lot of land may be changed to another nonconforming use upon application to the Board of Appeals and in accordance with the standards of Subsection C of this section.

F. **Abandonment.** A nonconforming use of any building, structure, or lot of land which has been abandoned shall not thereafter be resumed. For purposes of this subsection, a nonconforming use shall be considered abandoned:

- (1) When it has been replaced by a conforming use;
- (2) When a nonconforming commercial use has been discontinued for a period of two years, provided that is not open and operating for at least five days per week during traditional business hours for a period of at least three months in any twelve-month period during the prescribed two-year period shall be deemed to have been abandoned.

~~A. **Non-Residential Expansions:** Expansions of non-residential, nonconforming uses are prohibited.~~

~~B. **Residential Expansions:** A residential non-conforming use may be expanded by up to thirty (30%) percent of the area which it occupied at the time it became nonconforming, upon issuance of a Conditional Use Permit. The Board of Appeals may approve an expansion of a non-conforming use of more than thirty (30%) percent of the area which it occupied at the time it became nonconforming, if:~~

- ~~1. The use will conform to all other requirements of this Ordinance;~~
- ~~2. The expansion will not have an adverse impact on the groundwater. The Board shall consider any of the following as evidence that this condition is met:~~
  - ~~a. Written evidence that the sewage disposal system for the property complies with the current requirement of the Maine State Plumbing Code and is sized to accommodate the proposed expansion; or,~~
  - ~~b. Written evidence from a licensed soils evaluator that a subsurface sewage disposal system meeting the requirements the Maine State Plumbing Code and sized to meet the expanded use can be installed on the parcel; and,~~
  - ~~c. Written documentation from a groundwater hydrologist demonstrating that the proposed sewage disposal and water supply system will not affect the quality of quantity of groundwater supplies of abutting property owners.~~

~~C. **Resumption Prohibited:** A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one (1) year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one (1) year extension to that time period.~~

~~D. **Change of Use:** Subject to approval by the Board of Appeals, a lawful nonconforming use may be changed to another nonconforming use that is deemed less objectionable and detrimental than the existing lawful nonconforming use per the following criteria:~~

- ~~1. A change in use is one that results in an activity that is different in nature and purpose from the original use; results in a difference in the quality, character, degree, and kind of activity and is different in kind in its effect on the neighborhood.~~
- ~~2. Less objectionable and detrimental means that the new proposed nonconforming use will have a lesser effect on the neighborhood and on the property on which the use occurs, is less noticeable than the current use, is closer in nature to the uses allowed in the zoning district, or represents a decline in the volume and intensity of the use.~~
- ~~3. The Board of Appeals will review any application for change in nonconforming use in accordance with the following standards:~~
  - ~~a. The hours of operation are decreased or not increased.~~
  - ~~b. Undesirable effects such as noise, glare, vibration, smoke, dust, odor, or fire hazard are decreased or not increased.~~
  - ~~c. Hazardous traffic conditions are minimized or not increased, and the amount of traffic is decreased or not increased.~~
  - ~~d. The appearance of the property from public ways and abutting properties is improved and the value of adjacent properties will not be adversely affected.~~
  - ~~e. Unsanitary conditions as a result of sewage disposal, air emissions, or other aspects of its design or operation will not be created.~~

## **~~Section 16.5. NONCONFORMING STRUCTURES~~**

~~A. **Expansions:** A non-conforming building 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 create an increase the linear nonconformity of a structure and is in accordance with subparagraphs 1. and 2. below.~~

- ~~1. A non-conforming building shall not be added to or enlarged unless such addition or enlargement does not increase the linear extent of the nonconformance of the building or a variance is obtained from the Board of Appeals.~~
- ~~2. Whenever a new, enlarged or replacement foundation is constructed under a non-conforming building, the building and new foundation must be placed such that the setback requirements are met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in subsection B. Relocation, below. The construction or enlargement of a foundation under an existing dwelling shall not be considered an expansion provided that:~~

- ~~a. The completed foundation does not extend beyond the exterior dimensions of the structure.~~
- ~~b. The completed foundation does not cause the structure to be elevated by more than three (3') additional feet, as measured from the original ground level to the bottom of the first floor sill.~~
- ~~c. The addition of an open patio with no structure elevated more than three (3") inches above ground level shall not constitute the expansion of a non-conforming structure. The addition of steps or the enclosure of an existing porch shall not constitute the expansion of a nonconforming structure. But the addition of a deck does constitute the expansion of a non-conforming structure and the deck shall meet all the dimensional requirements of this Ordinance.~~

~~B. **Relocation:** A non-conforming building may be relocated within the boundaries of the parcel on which the building is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the 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 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 building be relocated in a manner that causes the building to be more nonconforming:~~

- ~~a. In determining whether the building relocation meets the setback to the greatest practical extent, the 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. **Reconstruction or Replacement:** 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 that demolition of the remains of any building so damage destroyed.~~