

ARTICLE X. NON CONFORMANCE

Sec. 18-301. Purpose.

It is the intent of this article to promote land use conformities, except that nonconforming conditions that existed before the effective date of this ordinance or that are created by subsequent amendments to this ordinance shall be allowed to continue, subject to the requirements set forth in this article. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

Sec. 18-302. General.

- (a) *Transfer of ownership.* Nonconforming structures, lots or 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 article.
- (b) *Repair and maintenance.* This article allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures, including repairs or renovations which 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.

NOTE: See Article II for the definitions of non-conforming structures, non-conforming uses and non-conforming lots.

Sec. 18-303. Nonconforming structures.

- (a) *Expansion.* A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in accordance with subsection (1) and (2) below. (See Article II for a definition of : Increase in nonconformity of a structure).

(1) 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 upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30 percent or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 18-303(d), 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.

(2) *Further limitation.* Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure, provided that the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in paragraph (c) relocation, below or that the completed foundation does not extend beyond the existing dimensions of the structure and that the foundation does not cause the structure to be elevated by more than three additional feet within shoreland areas.

(2) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure in any shoreland zoning district, 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 its designee, basing its decision on the criteria specified in Section 18-303(c) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for

expansion in conformity with Section 18-303(a)(1) 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.

(3) No structure which is less than the required setback from the high-water line of a water body, tributary stream or upland edge of a wetland shall be expanded toward the water body, tributary stream or wetland.

- (b) *Change of use of nonconforming structure.* The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the waterbody 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 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 commercial fishing and maritime activities, and other functionally water-dependent uses.

- (c) *Relocation.*

(1) 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 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 laws and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

(2) 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.

- (b) Relocation. A non-conforming structure in any shoreland zoning district 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 Planning Board or its designee, 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 Planning Board or its designee 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 Planning 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:

- (1) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) 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 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.

- (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.

(d) *Reconstruction and replacement.*

- (1) Any nonconforming structure which is removed or damaged or destroyed by more than 50 percent of the assessed value of the structure before such damage, destruction or removal may be reconstructed or replaced within one year of the date of said damage, destruction or removal, provided that such reconstruction or replacement is in compliance with the water and all other setback requirements to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this article. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.

- (2) Any structure which is damaged or destroyed by 50 percent or less of the assessed value of the structure may be repaired or reconstructed in place with a permit from the Code Enforcement Officer.

- (3) In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent, the Planning Board shall consider, in addition to the criteria in paragraph (2), above, the physical condition and type of foundation present, if any.

(c) Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback 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. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

- (i) If the reconstructed or replacement structure is less than the required setback from a water body, tributary stream, or wetland, it shall not be any larger than the original structure, except as allowed pursuant to Section 18.303(a) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location, 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 Planning Board or its designee in accordance with the purposes of this Ordinance.

- (ii) If the reconstructed or replacement structure is less than the required setback from a water

body, tributary stream, or wetland, 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, 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 Planning Board or its designee in accordance with the purposes of this Ordinance.

When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 18.303(b)(1) above.

Any non-conforming structure 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 Planning Board or its designee shall consider, in addition to the criteria in Section 18.303(b) above, the physical condition and type of foundation present, if any.

(d) 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, 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 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.

Sec. 18-304. Nonconforming uses.

- (a) *Expansions.* Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as permitted. It is the intent to limit expansion to 30 percent of floor area or volume.
- (b) *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 Planning Board may, for good cause shown by 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. Nonuse of a legally existing nonconforming structure shall not constitute abandonment of the structure. Conforming use of the structure may be resumed at any time.
- (c) *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 Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in section 18-303 above.

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

Sec. 18-305. Nonconforming lots.

- (a) *Nonconforming lots:* A nonconforming 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 size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals.
- (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. 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.

- (c) *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 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 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

(1) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(2) Any lots that do not meet the frontage and lot size requirements of subparagraph (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.

- (d) *Flag lots:* A flag lot may be used for a single-family use in the F&A and MDR Zoning Districts in which the lot is located. A lot of record in existence as of January 1, 1999 may be used for single-family uses in the F&A and MDR Zoning Districts in which the lot is located provided that:

(1) There exists an unobstructed access to the rear lot from the public street over land, which is not needed to meet the minimum requirements of the zone for the front lot. Such access shall be referred to as the access strip.

- (2) The access strip must be at least 25 feet in width for the full distance through the front lot from the public street to the rear lot. The owner of the rear lot must have sufficient legal rights in and to the access strip to ensure the required unobstructed access, which rights must run with the land.
- (3) The access strip shall not be used in the computing of minimum area and dimensional requirements of the zone for the rear lot.
- (4) The rear lot shall meet all the requirements of the zone in which it lies, except frontage on the public way. For the purposes of yard and area requirements, the front yard setback line shall be deemed to be at the prescribed setback distance from the deepest rear property line of the lot or lots between said rear lot and the nearest public street.
- (5) Only one tier of such rear lots shall be permitted behind the tier of lots fronting on the public street.

Secs. 18-306--18-325. Reserved.