

ARTICLE SEVENTEEN

NON-CONFORMING SITUATIONS

17.1 Non-Conforming Uses

17.1.1 Continuance

A non-conforming use which is otherwise lawful according to all applicable regulations may continue in accordance with this Article and other applicable regulations.

17.1.2 Resumption of Use Prohibited

A lot or structure, ~~in or which~~ **where** a non-conforming use is discontinued for a period exceeding 24 months, or which is superseded by a conforming use, may not again be devoted to a non-conforming use, except as allowed by this ordinance. This applies even if the owner has not intended to abandon such use.

17.1.3 A Structure Occupied by a Non-Conforming Use

17.1.3.1 A structure in which a non-conforming use occurs may be maintained and repaired, but may not be altered so as to expand the non-conforming use, except as provided by Section 17.1.6. ~~When a single family dwelling is a non-conforming use, the dwelling may be expanded provided it remains a single family dwelling.~~

17.1.3.2 No structure which is occupied solely by a non-conforming use may be enlarged, except as provided by Section 17.1.6. In the case of a structure in which both a non-conforming use and a conforming use occur, only that part of the structure which is occupied by the conforming use may be enlarged, except as provided by Section 17.1.6

17.1.3.3 A non-conforming use which occupies part of a structure may not be expanded into other parts of the structure, except as provided by Section 17.1.6.

17.1.3.4 **Single Family Non-Conforming Use.** When a single family dwelling is a non-conforming use, the dwelling may be expanded provided it remains a single family dwelling.

17.1.4 Non-Conforming Use of Land or Structures in all Base Zones

All such expansions of a non-conforming use or structure, in this section, are subject to review and approval by the Planning Board. **When** non-conforming use of land or a structure occurs, **it** may continue to exist. **And In addition, it** may expand within the lot boundaries existing as of March 13, 1982 in the Route One base zones or existing as of November 7, 2006 in other base zones. **Such** expanded use **of land** or structure **shall** meet the setback requirements **and shall conform** to the applicable performance standards of the zone in which it is located, **to the greatest extent** practical, as determined by the Planning Board. Such expansion shall be permitted within an overlay district only if the expansion is in full conformance with the overlay district.

17.1.5 ~~17.1.4~~ Change of Use

17.1.5.1 An existing non-conforming use may be changed to another non-conforming use provided that the new use is **equal** or more appropriate to the zoning district than is the existing non-conforming use, and the impact on adjacent properties is less adverse than the impact of the former use, as determined upon review by the Planning Board, using the criteria in Section 17.1.5.5

17.1.5.2 Reserved. AMMENDED 11/03/2009

17.1.5.3. The Code Enforcement Officer shall issue a permit to allow this change of use only when an approval is granted by the Planning Board. – **AMENDED**

11/04/1997, 11/03/2009

17.1.5.4 **AMENDED 11/03/2009**

17.1.5.5 The determination of appropriateness requires the issuance or denial of a change of non-conforming use permit based upon written findings on the changes in the following:

- traffic (volume and type),
- pedestrian circulation and amenities,
- parking,
- lighting,
- noise,
- stormwater run-off,
- impact on municipal facilities and services,
- character of the area, fumes,
- odors and potential for litter,
- wastes or by-products, likely to result from such change of use.

The performance standards contained in the zoning ordinance applicable to the zone and the new use must be met. - **AMENDED 11/04/1997**

17.1.5.6 An applicant requesting a change of use must submit an application that identifies the location and condition of the existing property, including a site plan, and a narrative

description of how the applicant believes the project satisfies the standards of 17.1.5.5. -

AMENDED 11/03/2009

17.1.6 Reserved. - AMENDED 11/07/2006

~~17.1.6 Non-Conforming Use of Land or Structures in all Base Zones~~

~~A non-conforming use of land or structure in which a non-conforming use occurs, may continue to exist and may expand within the lot boundaries, existing as of March 13, 1982 in the Route One base zones or existing as of November 7, 2006 in other base zones, provided the expanded use or structure meets the setback requirements, to the greatest extend practical as determined by the Planning Board, of the zone in which it is located. All such expansions must conform, to the greatest extend practical as determined by the Planning Board, to the applicable performance standards. Such expansion shall be permitted within an overlay district only if the expansion is in full conformance with the overlay district. All such expansions of a non-conforming use or structure are subject to review and final approval by the Planning Board. AMENDED 11/07/2006~~

17.2 Non-Conforming Structures

The ordinance for non-conforming has change a number of times. Prior to 2008 there was no enlargement allowed for footprint and volume. The following ordinance allows enlargement with certain conditions

17.2.1 Maintenance Repair, improvement and Enlargement

17.2.1.1 Maintenance, Repair and Improvement and Enlargement. A non-conforming structure may be maintained, repaired improved, and enlarge provided that they meet the following conditions there is no enlargement of the structure with respect to its footprint and/or its volume.

~~—AMENDED 04/10/1993, 11/07/2006~~

~~17.2.1.2 Enlargement. The standards applicable to Enlargement of Non-Conforming structures, as amended by the voters on November 4, 2008, shall retroactively apply to any application accepted by the Planning Board or Code Enforcement Officer on or after June 26, 2008, the date on which the first public hearing was posted for the amendments. The former Enlargement of Non-Conforming Structures provisions shall apply to applications accepted prior to this date. A non-conforming structure may be enlarged only in conformance with the provisions of this Section. A Code Enforcement Officer shall review the application to determine conformance with these standards, and may impose conditions on an approval to ensure conformance. Criteria for approval include each of the following: —AMENDED 11/04/2008, 11/03/2009~~

- A. The expansion is not within the 100-year floodplain or on a Coastal Dune;
- B. Expansion within the Shoreland Overlay District conforms to the requirements of §8.3.11.4;
- C. The expansion satisfies all applicable non-dimensional requirements of the zoning district in which the structure is located;
- D. The expansion results in neither expansion of other legal non-conformities nor the creation of any new nonconformities;
- E. A one-time vertical expansion of a non-conforming principal structure shall be permitted, provided that:

1. The expansion does not exceed the structure height limits specified in this Ordinance and,

2. In no case may the rear and side yard setbacks be less than five feet, and

3. In no case may the front yard setback be less than 15 feet.

4. In no case may the vertical expansion result in a structure height greater than that of the average height of adjacent principal structures. Adjacency shall be considered the facing, rear, and side lots within a radius of 125' from the lot boundary.

F. A one-time horizontal expansion shall be permitted, provided that:

1. The expansion shall extend no farther into the setback than the existing non-conforming structure, and

~~2. The area of the non-conforming structure shall not be more double the area of the original non-conforming structure;~~

3. In no case may the lot exceed maximum lot coverage.???

G. Expansion does not cause or worsen any safety problems, such as but not limited to reduction of sight distances from driveways or intersections; and???

H. The purpose of the expansion cannot ~~reasonably~~ be accomplished by expansion which is conforming because of reasons such as the configuration of the structure, topography of the lot, and other such factors.

I. An approved plan for expansion of a non-conforming structure, **based on a one time allowance**, shall be recorded by the applicant with the York County Registry of Deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the

footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority. - **AMENDED 03/18/1992, 11/07/2006, 11/04/2008, 05/20/2017**

17.2.1.3 Concerning Manufactured Housing: Manufactured housing units which fail to meet the standards set forth in Section 13.5, which were lawfully established prior to 12/13/84, shall be considered non-conforming structures and may continue and may be maintained, repaired, improved, and expanded only if the expansion results in bringing the manufactured housing unit ~~more in~~ compliance with the standards of Article 13. No such non-conforming structure may be replaced by another non-conforming structure, but may be replaced by a manufactured home that meets the requirements of Article 13. A non-conforming structure may be moved to a different location on the same lot or parcel of land as long as all applicable standards of the particular zoning district are met.

17.2.2 Patios, Steps, Decks

17.2.2.1 The addition of an open patio with no structures elevated above ground level does not constitute the enlargement of a non-conforming structure **but does effect lot coverage**

17.2.2.2 The addition of a deck or steps constitutes an enlargement of a structure and must meet all the applicable requirements of the zoning district in which the structure is located.

17.2.2.3 The addition of a fire escape required by any state or local fire regulation does not constitute the enlargement of the structure.

17.2.3 Foundations

17.2.3.1 The replacing of a foundation below a structure which increases the height of that structure constitutes the enlargement of that structure and must meet the provisions of Section 17.2.1. However, a structure in the Flood Hazard Area may be raised, if done to meet the requirements of the Floodplain Management Regulations. - **AMENDED 05/18/2002**

17.2.3.2 Construction of a foundation under an existing dwelling which expands the habitable space (any space for living, sleeping, bathing, eating, cooking, or dining purposes) constitutes the enlargement of that structure and must meet all applicable requirements of the zoning district in which it is located.

17.2.4 Reconstruction

17.2.4.1 Any non-conforming structure which is hereafter damaged or destroyed by fire, or by any cause other than the willful act of the owner or his agent, may be restored or reconstructed within 24 months of the date of said damage or destruction, provided that such restoration does not enlarge the size so that the structure becomes more nonconforming than the prior non-conforming structure. Nothing in this Section prevents the demolition of the remains of any structure so damaged or destroyed. For properties located in the Shoreland Overlay District, see more restrictive requirements of §8.3.11.4.g.

17.2.4.2 Designated Historic Structures under the jurisdiction of the Local Historic District Regulations shall be reconstructed in conformance with the guidelines in Article 12.

17.2.5 Except for buildings which are non-conforming with respect to required Shoreland setbacks, a non-conforming building can be demolished and replaced with another building so long as the new building is no more nonconforming than the building that is removed. To qualify under this provision, the property owner or applicant shall have a Maine-licensed land surveyor

locate the existing building on the lot and show it on a stamped plot plan. The new building shall be constructed within two years. Once the new building is in place and prior to the issuance of an occupancy permit, the surveyor must evaluate and certify that the new building is not more nonconforming than the prior building in any respect. For a building which is non-conforming with respect to required Shoreland setbacks, reconstruction or replacement is controlled by the standards of §8.3.11.4.

17.3 Non-Conforming Lots of Record

Town of York Zoning Ordinance Revised through May 20, 2017

17.3.1 Contiguous Lots - Vacant or Partially Built

Adjacent lots that are or that come under common ownership shall comply with the following standards. However, this section (§17.3.1) shall not apply to lots in a subdivision approved by the Planning Board of the Town of York, by the York Harbor Village Corporation, or by the York Beach Village Corporation after September 23, 1971, provided that the subdivision has vested its approval and the lots are still owned by the original subdivider.

A. Lots in the Shoreland Overlay District. When one or more of the adjacent lots lie partially or entirely in the Shoreland overlay district, lot consolidation shall be controlled by the following requirements.

1. A lot without a principal structure which is or becomes under the same ownership as an adjoining lot shall be merged with the adjoining lot to form a single lot when at least one of the lots is a non-conforming lot of record. This provision shall not apply if the lots are 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:

a. Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area;

or

b. Any lots that do not meet the shore frontage and lot size requirements of subparagraph “a” above 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.

2. No lot consolidated under this section shall be subdivided without approval of the Planning Board, and shall be subject to the regulations in effect at the time of the new application.

B. Lots Not in the Shoreland Overlay District. When no part of any of the adjacent lots lies in the Shoreland Overlay District, then the following controls apply.

1. Consolidation Criteria. Two or more adjacent lots that are or that become under the same ownership shall be merged to form a single lot, provided that both of the following apply.

a. At least one of the lots shall be a nonconforming lot with an area smaller than:

1. 12,000 square feet in the RES-4, RES-5, RES-6 or YBVC zone if served by public water and

public sewer; or

2. 20,000 square feet in all other circumstances.

b. At least one of the lots shall not have a principal structure.

2. Consolidation Sequence. In situations involving more than two lots, consolidations shall be sequenced in a manner that maximizes the number of lots remaining while ensuring compliance with §17.3.1.B.1, above.

3. Previously Consolidated Lots. Lots that were consolidated under prior standards may be re-established, or transferable development rights obtained, as follows:

a. Lots that were consolidated under prior lot consolidation provisions may be redivided if both of the following conditions are satisfied:

1. As a result of the re-division, none of the resulting redivided lots shall become smaller than:

a. 12,000 square feet in the RES-4, RES-5, RES-6 or YBVC zone if served by public water and public sewer; or

b. 20,000 square feet in all other circumstances.

2. The applicant shall demonstrate that the lots are suitable for the proposed uses, without requiring any variances.

The authority to regulate and standards for approval of re-divisions shall be determined by the State Subdivision Law (M.R.S.A. Title 30-A §4401-4407) and the Town's Site Plan and Subdivision Regulations.

b. Lots that were consolidated under prior lot consolidation provisions which cannot be redivided in accordance with the criteria in §17.3.1.B.3.a, above, shall be entitled to certain development rights which may be transferred to another property in accordance with the standards of this section. This is a simple form of Transfer of Development Rights (TDR). The following shall apply:

1. The TDR shall only be established for any undeveloped lot which was required by the Town to be merged with another lot. Lots, in their pre-merged condition, with any building development shall not be eligible.

2. The area of the former lot from which TDR is to occur shall be permanently restricted to prevent the construction of any new building, by means such as a deed restriction, prior to or concurrent with approval of the TDR.
3. The TDR shall be available to the developer of any subdivision located within the Growth Area as designated in the Comprehensive Plan.
4. The net buildable area of the receiving subdivision shall be increased by the net buildable area of the sending lot, but no subdivision shall use TDR credits to increase its density by more than 20% above that otherwise permitted.
5. This option requires approval of the Planning Board.

- **AMENDED 05/20/2000, 11/07/2006**

17.3.2 Vacant Lots

A vacant non-conforming lot not contiguous to another lot owned by the same person or corporation, may be built upon. A vacant non-conforming lot which has been re-divided pursuant to §17.3.1.B.3.a or which is not required to be consolidated per §17.3.1 may be built upon even if held in common ownership with the adjacent lot. In any case, the structure must conform to all applicable dimensional standards. - **AMENDED 11/06/2007**

17.3.3 Built Lots

A non-conforming lot on which a conforming structure is located is subject to the following restrictions:

17.3.3.1 The structure may be repaired, maintained, and improved, and may be enlarged provided that all dimensional requirements of the zoning district in which the lot is located, with the exception of lot size and/or lot frontage, can be met.

17.3.3.2 Accessory structures may be constructed on such non-conforming lots, provided that all dimensional requirements of the zoning district in which it is located, with the exception of lot size and lot frontage, can be met.

17.3.4 Dimensional Requirements for Non-Conforming Lots of Record

The following dimensional requirements shall apply to all non-conforming lots of record.

17.3.4.1 The width of irregularly (non-rectangular) shaped non-conforming lots shall be measured at the zoning ordinance established minimum front yard setback line.

17.3.4.2 In Districts GEN-1, GEN-2, GEN-3, YVC-1, YVC-2 RES-1, RES-2, and RES-3 side yard setbacks must be at least 12% of the width, and the rear yard setback must be at least 12% of the average depth, but in no case may the side yard or rear yard setback be less than 5 ft., and in no case shall setbacks for non conforming lots of record be made to be greater than that required for conforming lots in that base zone unless prescribed elsewhere in this ordinance.

- **AMENDED 05/21/2016**

17.3.4.3 Districts YBVC, RES-5, RES-6, and RES-7: Side yard setback must be at least 12% of the width, and the rear yard setback must be at least 12% of the average depth, but in no case may the side yard or rear yard setback be less than 5 ft., and in no case shall setbacks for non-conforming lots of record be made to be greater than that required for conforming lots in that base zone. - **AMENDED 05/17/2008, 11/04/2008, 11/06/2012**

17.3.4.4 Districts BUS-1, BUS-2, and RES-4: The dimensional requirements of the zone shall apply. There are no exceptions for non-conforming lots of record.

17.3.5 Contiguous Built Lots

If two or more contiguous lots are owned by the same person or corporation, if all or part of the lots do not meet the dimensional requirements of this ordinance, and if a principal use exists on each lot, the non-conforming lots may be conveyed separately or together.

17.3.6 Uses Requiring Lots Larger Than the Zoning District Minimum

No use that requires a lot area or frontage which is greater than the established minimum lot area or frontage for the zoning district in which it is located is permissible on a non-conforming lot.

17.3.7 Vested Rights

Vested rights to maintain a non-conforming use do not arise from the mere filing of a notice of intent to build, an application for a building permit, or an application for required state permits and approvals. Such rights arise only when substantial construction of a structure is begun prior to the enactment or amendment of this ordinance. Such construction must be legal at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both state and local.

17.4. Non-Conforming Design

A. A non-conforming design may continue indefinitely without change.

B. A building or use on a property with non-conforming design shall be permitted to expand or change provided the property after the expansion is closer to conformity than it was prior to the expansion. Where there are multiple aspects of non-conformity, each aspect must be improved in

some manner. The burden shall be on the applicant to establish the baseline of non-conforming conditions and to show how the required reductions in each aspect of non-conformity will be

met. - **AMENDED 11/07/2006**