

SECTION 6 NONCONFORMING SITUATIONS

6.1 Purpose

It is the intent of this Section to promote land use conformities, except that nonconforming 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 this Section. Except as otherwise provided in this Section, a nonconforming condition shall not be permitted to become more nonconforming.

6.2 General Provisions

6.2.1 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.

6.2.2 Nonconforming structures, lots, and uses may be transferred and the new owner may continue the nonconforming structure, lot or use subject to the provisions of this Ordinance.

6.2.3 This Ordinance allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations which do not involve expansion of 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.

6.2.4 Nothing in this Ordinance shall prevent the strengthening or restoring to safe condition any part of any building or structure declared unsafe by the Code Enforcement Officer.

6.3 Nonconforming Uses

6.3.1 A nonconforming use which is discontinued for a period of two (2) years may not be resumed. The uses of land, building or structure shall thereafter conform to the provisions of this Ordinance.

6.3.2 Whenever a nonconforming use is superseded by a permitted use of a structure, or structure and land in combination, land and structure shall thereafter conform to the provisions of this Ordinance and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

6.3.3 Any nonconforming use except uses in the Resource Protection District may be expanded by a total of no more than twenty-five percent (25%) of the size or area in nonconforming use. A legally existing commercial or industrial use at the time of adoption of this Ordinance that is made nonconforming by the adoption of this section may be expanded in accordance with the provisions of **6.3.5**.

6.3.4 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, including water dependent uses in the district, 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 **6.3.4.1**.

6.3.4.1 In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects of the change in use on public health and safety, traffic, noise, 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.

6.3.5 A legally existing commercial or industrial use at the time of adoption of this Ordinance except uses located in the Shoreland Overlay District or Resource Protection District that is made nonconforming by the adoption of this section may be expanded by more than twenty-five (25) percent in accordance with the following provisions:

6.3.5.1 The total floor area of all structures on the lot may be increased by not more than fifty (50) percent of the floor area existing on the date of adoption of this provision.

6.3.5.2 The total impervious surface area on the lot may be increased by not more than fifty (50) percent of the impervious surface area existing on the date of adoption of this provision.

6.3.5.3 If the lot on which the nonconforming use is located is in a residential district or abuts the boundary of an adjacent residential district, a residential buffer strip not less than twenty (20) feet in width and meeting the requirements of ____ shall be established along any property line that abuts a lot with an existing residential use.

6.3.5.4 If the lot on which the nonconforming use is located is in a mixed-use district or abuts the boundary of an adjacent mixed-use district, a residential buffer strip not less than ten (10) feet in width and meeting the requirements of ____ shall be established along any property line that abuts a lot with an existing residential use.

6.4 Nonconforming Lots of Record

6.4.1 A structure or dwelling may be erected on any single nonconforming lot of record existing at the time of adoption or amendment of this Ordinance, provided that such lot shall not be contiguous with any other lot in the same ownership; and shall meet all other provisions of this Ordinance except for lot area, lot width, and shore frontage. Any variance 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.

6.4.2 If two (2) or more contiguous lots of record are in single or joint ownership at the time of, or since adoption or amendment of this Ordinance, and if any of these lots do not individually meet the dimensional requirements of this Ordinance, 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 lots in approved subdivisions created after September 22, 1971.

6.4.3 If two (2) or more contiguous lots of record are in single or joint ownership at the time of adoption of this Ordinance, and if all or part of the lots do not meet the requirements of this Ordinance and if a principal structure exists on each lot, the nonconforming lots may be conveyed separately or together. Any such lots located within the Shoreland Overlay District or Resource Protection District may be conveyed separately only if the lots comply with 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.

6.4.4 If two (2) or more principal structures exist on a single lot of record as of the effective date of this Ordinance, each may be sold on a separate lot. When such lots are divided, each lot shall be as conforming as possible to the dimensional requirements of this Ordinance and shall meet the laws and rules referenced in **6.4.3**.

6.4.5 A nonconforming lot of record in existence as of the effective date of this Ordinance shall not be divided so as to create further nonconformity.

6.5 Nonconforming Structures not Located in the Shoreland Overlay District or Resource Protection District

6.5.1 Any nonconforming structure may be expanded in conformance with the provisions of this Ordinance and the following:

6.5.1.1 A nonconforming building may be expanded to the side, rear or front of the property if the proposed expansion is no closer than the existing building setback and is a minimum of five (5) feet from the property boundary line.

6.5.1.2 The construction or enlargement of a foundation beneath an existing nonconforming building shall not be considered an expansion of the building provided that the new foundation does not extend beyond the exterior dimensions of the building.

6.5.2 Any nonconforming structure may be replaced within two (2) years when such structure is removed, damaged, or destroyed regardless of the cause. Any structure not replaced within two (2) years shall conform to the provisions of this Ordinance.

6.5.3 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. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

6.6 Nonconforming Structures Located in a Shoreland Overlay District or Resource Protection District

6.6.1 General

6.6.1.1 A nonconforming structure may be added to or expanded after obtaining a permit in the same manner as a permit for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in conformance with the provisions of this section.

6.6.1.2 No structure which is less than the required setback from the normal 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.

6.6.2 Expansion

6.6.2.1 Expansion of any portion of a structure within twenty-five (25) feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.

6.6.2.2 Notwithstanding **6.6.2.1** above, if a legally existing nonconforming principal structure is entirely located less than twenty-five (25) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met.

6.6.2.2.1 The maximum total footprint for the principal structure may not be expanded to a size greater than eight hundred (800) square feet or thirty percent (30%) larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than fifteen (15) feet or the height of the existing structure, whichever is greater.

6.6.2.3 All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met.

6.6.2.3.1 For structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand (1,000) square feet or thirty percent (30%) larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than twenty (20) feet or the height of the existing structure, whichever is greater.

6.6.2.3.2 For structures located less than one hundred (100) feet from the normal high-water line of Adams Pond or Knickerbocker Lakes the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand five hundred (1,500) square feet or thirty percent (30%) larger than the footprint that existed

on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than twenty-five (25) feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in **6.6.2.2.1** or **6.6.2.3.1**, above.

6.6.2.3.3 In addition to the limitations in **6.6.2.3.1** and **6.6.2.3.2**, for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than two hundred fifty (250) feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than one thousand five hundred (1,500) square feet or thirty percent (30%) larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than twenty-five (25) feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than seventy-five (75) feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in **6.6.2.2.1** or **6.6.2.3.1**, above.

6.6.2.3.4 An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within ninety (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.

6.6.2.4 Foundations. 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 its designee, basing its decision on the criteria specified in **6.6.3** Relocation, below.

6.6.3 Relocation

6.6.3.1 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 wastewater disposal meets the requirements of State law and Subsurface Wastewater Disposal 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 nonconforming.

6.6.3.2 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 systems 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 accordance with **7.5.17.4.8**. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

6.6.3.2.1 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 (5) trees are planted, no one species of tree shall make up more than fifty percent (50%) of the number of trees planted. Replanted trees must be planted no further from the water or wetland than the trees that were removed.

6.6.3.2.2 Other woody and herbaceous vegetation, and ground cover, that is 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 re-established within the setback area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar to what was disturbed, destroyed or removed.

6.6.3.2.3 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.

6.6.4 Destruction, Reconstruction or Replacement

6.6.4.1 Any nonconforming structure which is located less than the required setback from the normal high-water line of a water body or upland edge of a wetland, and which is removed, damaged or destroyed, regardless of the cause, by more than fifty (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 two (2) years 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 Planning Board in accordance with the purpose of this Ordinance. In no case shall a structure be reconstructed or replaced to increase its nonconformity. If the reconstructed or replacement structure is located less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to **6.6.2** as determined by the nonconforming footprint of the reconstructed or replaced structure at its new location. If the total footprint 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 6.6.3.

6.6.4.2 Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by fifty percent (50%) or less of the market value or damaged or destroyed by fifty percent (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 within two (2) years of such damage, destruction, or removal, if nonconforming footprint after the repair or reconstruction is no greater than the floor area or volume before the removal, damage or destruction.

6.6.4.3 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 **6.6.3**, the physical condition and type of foundation present, if any.