

ARTICLE 2. NON-CONFORMANCE

A. General Requirements

1. Transfer of Ownership: Non-conforming structures, lots, and uses may be transferred, and may continue to be used, subject to this Ordinance.
2. Repair and Maintenance: This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures, and such other changes as Federal, State, or local building and safety codes may require.

B. Non-Conforming Structures

1. Expansions: A non-conforming structure may be 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. If any portion of a structure is less than the required setback from the normal high-water line of a water-body or upland edge of a wetland, that portion of the structure shall be expanded subject to the restrictions contained within the Shoreland Ordinance.

Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided:

- a. 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 Subsection 2 Relocation, below;
 - b. The foundation does not cause the structure to be elevated by more than three (3) additional feet.
2. Relocation: A non-conforming structure may be relocated within the boundaries of the parcel provided that the site of relocation conforms to all setback or other dimensional requirements to the greatest practical extent as determined by the Planning Board.

In determining "greatest practical extent," the Planning Board shall base its decision on the size of the lot, the slope of the land, the potential for soil erosion, the location of the septic system, the suitability of on-site soils for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

3. Reconstruction or Replacement: Any non-conforming structure which is removed, damaged or destroyed, **regardless of cause**, may be reconstructed or replaced provided that a permit is obtained from the **Planning Board Code Enforcement Officer** within one year of the date of said damage, destruction or removal, and provided that such reconstruction or replacement is in compliance with the dimensional requirements to the greatest practical extent as determined by the **Planning Board Code Enforcement Officer**.

In determining "greatest practical extent," the **Planning Board Code Enforcement Officer** shall consider the criteria in ~~Paragraph 2 above~~ **Article 2 section B(2)**.

4. Change of Use of a Non-Conforming Structure: (Shoreland Areas Only)

See Shoreland Zoning Ordinance, ~~Section~~ **Article 11 section 12(C)** of this Ordinance.

C. Non-Conforming Uses

1. Expansions: Expansions are prohibited, except expansions within residential structures legally existing as of the effective date of the Ordinance.
2. Resumption Prohibited: A non-conforming use which is discontinued for two years or more, or which is superseded by a conforming use, may not again be devoted to a non-conforming use.
3. Change of Use: Non-conforming use may be changed to another non-conforming use provided that the Planning board finds, after receiving a written application and holding a public hearing, that the proposed use is equally or more appropriate to the district, and that it will have no greater adverse impact on adjacent properties than the former use.

The Planning Board shall mail notice to all properties within 500 feet of the property for which a written application has been submitted to change a non-conforming use. The notice must be mailed 13 days before the public hearing to the last known address of the person to whom the property tax on each parcel is assessed.

The determination of appropriateness shall be based on the probable impact on ground water resources, and the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use. The performance standards of this Ordinance shall apply to such requests to establish new non-conforming uses.

In determining whether or not greater adverse impact will occur, the Planning Board shall require written documentation from the applicant regarding the probable effects on ground water, 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, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

D. Non-Conforming Lots

1. Non-conforming Lots: A single lot of record which does not meet the area or width requirement, or both, may be built upon provided that such lot shall be in separate ownership and not contiguous with any other lot in the same ownership, and that all other provisions of this Ordinance and other relevant ordinances shall be met. Variance of yard or other requirements not involving area or width shall be obtained only by action of the Board of Appeals.
2. Adjacent, Developed Lots: If two or more adjacent lots are in the same ownership of record at the time of adoption or amendment 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 lots of at least 20,000 square feet

are created and that all such lots meet the requirements of the State Subsurface Wastewater Disposal Rules.

If two or more principal structures existed on a single lot of record 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, **as determined by the Planning Board.**

3. Adjacent Lots - Vacant or Partially Built: If two or more adjacent lots are in the same ownership of record at the time of ~~adoption~~ **of adoption** or amendment of this Ordinance, 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, then the lots shall be combined to the extent necessary to meet the dimensional requirements.

(END OF ARTICLE II)

DRAFT
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