

Town of Bowdoinham
Land Use Ordinance

ARTICLE 3: NONCONFORMANCE

A) Purpose

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue but may not be expanded, reconstructed, or structurally altered, except as set forth in this Ordinance.

B) General

1) Transfer of Ownership

Non-conforming 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.

2) Repair and Maintenance

This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming 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 non-conforming use or structure as federal, state, or local building and safety codes may require.

C) Non-conforming Buildings

1) 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 nonconformity of a structure and is in accordance with subparagraphs a) and b) below.

- a) 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 unless a variance is obtained from the Board of Appeals.
- b) 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. In making this determination, the Planning Board or its designee shall follow the process found in Article 11, Section C.4, basing its decision on the criteria specified in Article 3, Section C.2, Relocation, below. The construction or enlargement of a foundation under an existing dwelling shall not be considered an expansion provided that:
 - (i) The completed foundation does not extend beyond the exterior dimensions of the structure.

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- (ii) 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.
- (iii) The addition of an open patio with no structure elevated more than three 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 non-conforming structure. However, 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.

2) 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 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 building be relocated in a manner that causes the building to be more non-conforming.

- a) 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.

3) 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, to the greatest practical extent, be no more nonconforming than the prior nonconforming building or use. Nothing in this section shall prevent the demolition of the remains of any building so damage destroyed.

- a) In determining whether the reconstruction is no more nonconforming than the prior building 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 reconstruction or replacement.

D) Non-conforming Uses

1) Expansions

Expansions of non-conforming uses are prohibited.

2) Resumption Prohibited

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A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one 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-year extension to that time period.

3) 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.

- a) 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.
- b) 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.
- c) The Board of Appeals will review any application for change in nonconforming use in accordance with the following standards.
 - (i) The hours of operation are decreased or not increased.
 - (ii) Undesirable effects such as noise, glare, vibration, smoke, dust, odor, or fire hazard are decreased or not increased.
 - (iii) Hazardous traffic conditions are minimized or not increased, and the amount of traffic is decreased or not increased.
 - (iv) The appearance of the property from public ways and abutting properties is improved and the value of adjacent properties will not be adversely affected.
 - (v) Unsanitary conditions as a result of sewage disposal, air emissions, or other aspects of its design or operation will not be created.

E) Non-conforming Lots

1) 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 a 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 area, lot frontage and shore frontage can be met. Variances relating to setbacks or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

2) 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 non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A.

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§ 4807-A through § 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

a) 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.

3) 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.