# Town of Kittery
# Planning Board Meeting
# August 25, 2016

**Town Code Amendment - 16.7.3 Nonconformance**

Action: Review amendment. The proposed amendment is a reorganization of the Nonconformance provision within Title 16.

**PROJECT TRACKING**

| REQ'D | ACTION | COMMENTS | STATUS |
|---|---|---|---|
| YES | Initial Planning Board Meeting | Scheduled for discussion on 8/25/2016 | PENDING |
| NO | Secondary Planning Board Meeting | | |
| YES | Public Hearing (special notice requirements) | | TBD |
| YES | Review/Approval/ Recommendation to Town Council | | TBD |

## Review

The intent of this amendment is to reorganize the current nonconformance article to enable the provision to be organized primarily under three specific types, use, lot and structure. Currently, the article is unorganized and difficult to read an dinterpret.

Staff has provided a preliminary, conceptual review of a proposed reorganization of Title 16.7.3 - Nonconformance, for the Board's consideration. Within the existing 16.7.3, the ordinances for nonconforming uses and structures are intermingled with one another, and there is one example of two Nonconforming Use Expansion provisions (16.7.3.5.2 and 16.7.3.5.7). In addition, ordinances addressing nonconformity within the Shoreland Overlay Zone appear in multiple locations throughout 16.7.3.5, as well as in the dedicated section, 16.7.3.6, Nonconforming Structures in the Shoreland and Resource Protection Overlay Zones. To address these issues, Staff proposes the following amendments:

1. The purpose of Title 16.7.3, as stated in Title 16, is to "regulate nonconforming lots, uses and structures". Therefore, the proposed amendment uses nonconforming "lots", "uses", and "structures" as the three primary "types of nonconformance". Existing ordinances 16.7.3.5.1 – 16.7.3.5.14 are classified and included as a subsection below the type of nonconformance they are addressing.

2. Items that do not pertain exclusively to a structure, use or lot, but rather address all three types of nonconformities, such as Transfer of Ownership and Repair and maintenance, are included at the beginning of the article as "General Prohibitions and Allowances".

3. Ordinances specifically addressing nonconformity in the Shoreland Overlay Zone are included as a subsection of the type of nonconformity they are addressing, rather than a subject heading in itself.

4. Duplicate ordinances are condensed and redundancies removed.

Attached is an outline of the existing Title 16.7.3 (attachment A) and the proposed amendment (attachment B), along with the existing code to be amended.

## Recommendation

This is an opportunity for the Board to review the structure of the proposed reorganization and determine whether it is a desired amendment to Title 16. If the Board concurs, the Board may proceed and move to

continue the amendment for further review (suggested motion provided below) and direct Staff to privde an annotated amendment for the Board's review and approval.

**… move to continue the Town Code amendment 16.7.3, Nonconformance to September 29, 2016.**

**Exhibit A**

Outline for existing code

Article III - Nonconformance

16.7.3 Purpose

- 3.1 - Prohibitation and Allowances
- 3.2 - Transfer o fOwnership
- 3.3 - Repair and Maintenance
- 3.4 - Discontinued Resumption Prohibited
- 3.5 - Types of Nonconformance
  - 5.1 Nonconforming Use Continuance
  - 5.2 - Nonconforming Use Expansion
  - 5.3 - Nonconforming Residentual Use in Commercial Zones Expansion
  - 5.4 - Nonconforming Structure Relocation
  - 5.5 - Nonconforming Structure Repair and/or Expansion
  - 5.6 - Nonconforming Structure Reconstructure
  - 5.7 - Nonconforming Use Expansion
  - 5.8 - Nonconforming Use Change - Review Authority and Evaluations
  - 5.9 - Nonconforming Lots of Record
  - 5.10 - Contiguous Non-conforming Lots
  - 5.11 - Single Lot Division of a Nonconforming Lot
  - 5.12 - Adjustment of Common Boundary Line of Nonconforming Lots
  - 5.13 - Nonconforming Parking or Loading Space
  - 5.14 - Nonconforming Steps
- 3.6 - Nonconforming Structures in Shoreland and Resource Protection Overlay Zones
  - 6.1 - Nonconfomring Structure Expansion
  - 6.2 - Nonconforming Use Change

Exhibit B

Outline for proposed amendment

Article III - Nonconformance

16.7.3 Purpose

- 3.1 - General Prohibitation and Allowances
  - 1.2 - Transfer of Ownership
  - 1.3 - Repair and Maintenance
  - 1.4 - Nonconforming Parking or Loading Spaces
- 3.2 - Types of Nonconformance
  - 2.1 Nonconforming Structures
    - 1.1 - Nonconforming Structure Relocation
    - 1.2 - Nonconforming Structure Repair and/or Expansion
      - A. Nonconforming Structure expansion in the Shoreland or Resource Protection Overlay Zone
      - B. Expansion of Nonconforming Residential Structure in the Commercial Zone
      - C. Nonconforming Steps
    - 1.3 - Nonconforming Structure Reconstruction
    - 1.4 - Nonconforming Structure in Shoreland or Resource Protection Overlay Zone
  - 2.2 Nonconforming Uses
    - 2.1 - Nonconforming Use Continuance
    - 2.2 - Discontinued Nonconforming Use Resumption
    - 2.3 - Nonconforming Use Expansion
    - 1.4 - Nonconforming Use Change
  - 2.3 Nonconforming Lots
    - 3.1 - Nonconforming Lots of Record
    - 3.2 - Contiguous Nonconforming Lots
    - 3.3 - Single Lot Division of a Nonconforming Lot
    - 3.4 - Adjustment of Common Boundary Line of Nonconforming Lots

**Article III. Nonconformance** (Ordained 9-26-11; Effective 10-27-11)

**16.7.3 Purpose.**
The purpose of this Code is to promote land use conformities. The purpose of this Article is to regulate nonconforming lots, uses, and structures.

**16.7.3.1 Prohibitions and Allowances.**

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

B. Nonconforming vacant lots of record may be developed, maintained or repaired.

C. Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use.

**16.7.3.2 Transfer of Ownership.**
Legally nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure and/or lot, subject to the provisions of this Code.

**16.7.3.3 Repair and Maintenance.**
This Code allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure that is not otherwise permitted by this Code, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

**16.7.3.4 Discontinued Resumption Prohibited.**
A lot on, or structure in, which a nonconforming use is discontinued for a period exceeding one (1) year, or which is superseded by a conforming use, loses its status as a nonconforming use. The uses of the land or structure must thereafter meet the provisions of this Code. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential occupancy during the preceding five (5) year period.

**16.7.3.5 Types of Nonconformance.** (Ordained 9-26-11; Effective 10-27-11)

**16.7.3.5.1 Nonconforming Use Continuance.**
The use of land, or structure, lawful at the time such use or structure was created, may continue although such use or structure does not meet the provisions of this Code.

**16.7.3.5.2 Nonconforming Use Expansion.**
Expansion of nonconforming uses is prohibited, except nonconforming residential uses may, be expanded within existing residential structures or within expansions of such structures as allowed in Section 16.7.3.4., Nonconforming Residential Use in Commercial Zones Expansion.

**16.7.3.5.3 Nonconforming Residential Use in Commercial Zones Expansion.**
Notwithstanding the above limitations on expansion of nonconforming use, a nonconforming residential use located within the Commercial zones may be expanded. Where the expansion of the residential use

involves an expansion of a structure, the structure must be expanded in conformity with the dimensional requirements contained in this Code. If the proposed structure expansion cannot meet the dimensional requirements of this Code, the application must be submitted to the Board of Appeals for review as a Miscellaneous Variation Request. In reviewing all such applications, the Board of Appeals must use the criteria established herein, and then may approve proposed dimensional requirement variations.

**16.7.3.5.4 Nonconforming Structure Relocation.**

A. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided the site of relocation conforms to all dimensional requirements to the greatest practical extent as determined by the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone), and provided the applicant demonstrates the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or a new system can be installed in compliance with the law and said Rules. In no case may the relocation of a structure be permitted that causes the structure to be more nonconforming. See Chapter 16.8, Article VII, for other specific requirements related to septic waste disposal systems.

B. In determining whether the structure relocation meets the setback to the greatest practical extent, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), must 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.

C. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, replanting of native vegetation to compensate for the destroyed vegetation is required. The Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resource Protection Overlay Zone) may restrict mowing around and pruning of the replanted native vegetation to encourage a more natural state of growth. Replanting is required as follows: (Effective 2/28/15)

1. Trees removed to relocate a structure must be replanted with at least one native tree, six (6) feet in height, for every tree removed. If more than five trees are planted, no one species of tree can be used to make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from the water or wetland than the trees removed.
2. Other woody and herbaceous vegetation and ground cover that is removed, or destroyed, to relocate a structure must be reestablished. 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 native vegetation and/or ground cover similar to that disturbed, destroyed or removed.
Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. Removal of the stakes, caution tape, silt fences, and such other materials used during construction, is required at the completion of the onsite work, but not before permission to remove such has been given in writing by the Code Enforcement Officer.
3. Where feasible, when a structure is relocated on a parcel, the original location of the structure must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.

D. If the total amount of floor area and volume of the original structure can be relocated beyond the required setback area, no portion of the relocated structure may be constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.

**16.7.3.5.5 Nonconforming Structure Repair and/or Expansion.** (Ordained 9-26-11; Effective 6-28-11)

A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

B. If the proposed expansion of a structure is: (1) a vertical expansion that follows the existing building footprint and (2) will not result in setbacks less than those existing, approval by the Board of Appeals is not required if the structure is not located in a Shoreland Overlay or Resources Protection Overlay Zone. Applications for such development will be reviewed and may be approved by the Code Enforcement Officer or the Planning Board if the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone. This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or to a principal structure in accordance with Table 16.9 – Minimum Setbacks from Wetlands and Water Bodies.

C. Except in the Residential - Village (R-V) zone, minimum setbacks of residential storage sheds that are less than one hundred-twenty-one (121) square feet one-story residential garages that are less than five hundred and seventy-seven (577) square feet, and decks less than two hundred fifty-one (251) square feet, may be one-half the minimum rear and side yard setbacks providing the lots are legally nonconforming.

**16.7.3.5.6 Nonconforming Structure Reconstruction.** (Ordained 1/28/15; 9/28/15)

A. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, by any 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, 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.

B. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed by any cause by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer within twelve (12) months of the established date of damage or destruction.

C. Outside of the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is removed, damaged or destroyed by any cause may be restored or reconstructed in-place if a permit is obtained from the Code Enforcement Officer within eighteen (18) months of the date of said removal, damage or destruction. Such restoration or reconstruction must not make the structure more nonconforming than the prior nonconforming structure. Nothing in this section prevents the demolition of the remains of any building so damaged or destroyed.

D. In the Shoreland or Resource Protection Overlay Zone(s), If the total amount of floor area and volume of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Nothing in this section prevents the demolition of the remains of any building so damaged or destroyed.

E. In no case will may a structure be reconstructed or replaced so as to increase its non-conformity. In the Shoreland and Resource Protection Overlay Zones, if the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location.

F. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

**16.7.3.5.7 Nonconforming Use Expansion.**

Expansion of a nonconforming use of any structure or land area other than that occupied as such when created is not permitted with the following exceptions:

A. uses in conformity with Chapter 16.7; and

B. nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor area or volume, during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards in Section 16.3.2.17.D.2.

**16.7.3.5.8 Nonconforming Use Change – Review Authority and Evaluations.**

The reviewing authority per subsections A B. and C below, may require evaluations be prepared by a person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing 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.

A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use does not impact a water body, tributary stream, or wetland. See Section 16.4.3.5.

B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of the Board of Appeals provided the proposed use is not more nonconforming.

C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board per Section 16.7.3.6.2.

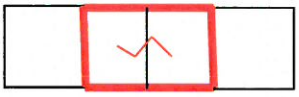
**16.7.3.5.9 Nonconforming Lots of Record.** (Ordained 1-23-12; Effective 2-23-12)

A. Nonconforming Lots: In any district, notwithstanding limitations imposed by other sections of this Code, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located. Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.

**16.7.3.5.10 Contiguous Non-Conforming Lots.** (Effective 2/28/15)

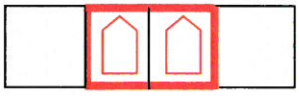
A. Contiguous Nonconforming Lots. If two or more contiguous nonconforming lots or portions thereof are in single or joint ownership of record, and if all or part of the lots do not meet the dimensional requirements of this Title, and if one or more of the lots are vacant or contain no principal structure, the lots must be combined to the extent necessary to meet the applicable dimensional requirements of this Title.

A.



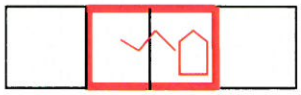
B. Contiguous Built Upon Nonconforming Lots. If two or more contiguous lots or parcels are in a single or joint ownership of record prior to July 13, 1977 and prior to December 15, 1973 for properties within the Shoreland Overlay Zone, if all or part of the lots do not meet the dimensional requirements of this Title, 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. §4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

B.



C. Contiguous Partially Built Upon Lot. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of or since adoption or amendment of this Title, if any of these lots do not individually meet the dimensional

C.



requirements of this Code 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 applicable dimensional requirements of this Title.

This subsection does not apply:

1. to any Planning Board approved subdivision which was recorded in the York County Registry of Deeds on, or before July 13, 1977 or prior to December 15, 1973 for properties within the Shoreland Overlay Zone;

2.. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and

i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

**16.7.3.5.11 Single Lot Division of a Nonconforming Lot.**

If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. If three or more principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code.
(Ordained 1-23-12; Effective 2-23-12)

**16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots.** (Effective: 2/28/15)

A. The common property line of two nonconforming lots of record, each with legally created principal structures, can be adjusted if:

1. The Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than the existing lots with respect to the dimensional requirements of this Code; or

2. Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code; and

a. each resulting lot is not less than 20,000 S.F. in lot size when not served by public sewer; or

b. each resulting lot is not less than the smallest residential lot permitted under the town's land use base zones, Title 16.3, when served by public sewer; or

3. Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal structures and uses[1]; and

a. each resulting lot is not less than 20,000 S.F. in lot size and not less than 100 feet in shore frontage[2,3]; and

b. a lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses remains conforming to those requirements[1]; and

c. common boundary lines may not be adjusted when both subject lots are non-conforming per state minimum lot size requirement.[3]

[1] *Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances*, Section 15.A Minimum Lot Standards; adjacent to Tidal Areas: 30,000 S.F. lot size with 150 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 S.F. lot size with 200 feet of shore frontage.

[2] Title 16.7.3.5.12.A.3.a is allowed only when both subject lots are under the same single or joint ownership.

[3] Adherence to State Minimum Lot Size Law (12 M.R.S. sections 4807-A through 4807-D) and State of Maine Subsurface Wastewater Disposal Rules or public sewer is required.

B. It is not the intention of the above subsection (Adjustment of Common Boundary Line of Non-Conforming Lots) to allow for the creation of an additional lot. A property line adjustment in accordance with this subsection and Title 16.7 does not constitute the creation of a new lot and the adjusted lot remains a legally non-conforming lot of record, not applicable to the joining of lots.

**16.7.3.5.13 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)
A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Code for both the original and addition or enlargement of the structure or use.

**16.7.3.5.14 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)
The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet (3'x3') in size.

**16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.**
(Ordained 9-26-11; Effective 10-27-11)

**16.7.3.6.1 Nonconforming Structure Expansion.**
A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs below.

A. 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 the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.5.4 and Section 16.7.3.5.6 and is less than the required setback from a water body, tributary stream or wetland, the replacement

structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming 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, basing its decision on the criteria specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.6.1.A, 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 will not be considered to be an expansion of the structure.

**16.7.3.6.2 Nonconforming Use Change.**

An existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for the determination of no greater adverse impact, the Planning Board may 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.