

**Town of Kittery  
Planning Board Meeting  
October 27, 2016**

**Town Code Amendment - 16.7.3 Nonconformance, 16.2.2 Definitions**

Action: Hold a public hearing. Recommend to Town Council. The proposed amendment is a reorganization of the Nonconformance provision within Title 16 and updates to ordinances pertaining to the expansion of nonconforming structures within the Shoreland or Resource Protection Overlay Zones.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Initial Planning Board Meeting	9/29/2016	HELD
NO	Secondary Planning Board Meeting		
YES	Public Hearing (special notice requirements)	Scheduled for 10/27/2016	PENDING
YES	Review/Approval/ Recommendation to Town Council		TBD

**Background**

The intent of this amendment is to reorganize the current nonconformance article to enable the provision to be organized primarily under three specific types of nonconformance: structures, uses and lots. In addition, the amendment includes updates to the ordinances regarding the expansion of nonconforming structures in the Shoreland or Resource Protection Overlay Zones, outlined below. Currently, the article is unorganized and difficult to read and interpret.

Attached are copies of both the existing and proposed ordinance, for the Board's review and consideration.

**Review**

*The proposed amendment includes the following changes to the current ordinance:*

- 1. The purpose of Title 16.7.3 is to "regulate nonconforming lots, uses and structures". Therefore, the proposed amendment uses "lots", "uses" and "structures" as the primary types of nonconformance with existing ordinances 16.7.3.5.1 – 16.7.3.5.14 classified and included as subsections below the type of nonconformance they are addressing. In addition, the order of the listed nonconformances was modified in 16.7.3, "Purpose", to align with the order throughout the article.*
- 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" or "Repair and maintenance" are included at the beginning of the article as "General".*
- 3. Duplicate ordinances are condensed and redundancies have been removed. Modified ordinances are identified as "moved and modified to..." throughout the amendment while stricken ordinances referencing "moved to.." have been relocated verbatim.*
- 4. In instances where the existing ordinance addresses more than one type of nonconformance, the proposed amendment splits the ordinance, and revises to include as a subsect for each type of nonconformance addressed. (ex: existing 16.7.3.5.3 Nonconforming Residential Use in*

*Commercial Zones Expansions, and existing 16.7.3.5.4.D, subsect of Nonconforming Structure Relocation)*

5. *Staff proposes to remove the “Type of Nonconformance” header (line 43) in order to remain consistent with the code system of Title 16, which does not exceed 5 numerical codes prior to the inclusion of alpha subsections. The ordained and effective dates listed along with the existing 16.7.3.5 are the same ordained and effective dates for the entire article and are listed along with the article heading 16.7.3. The Board should determine whether displaying the dates at the onset of the article is sufficient, or if including the dates after each type of nonconformance is preferable. Staff will revise, if preferred.*
6. *The code reference on line 325 is for Section 16.4.3.5 is Business Use Changes. It is unclear whether this is an incorrect code reference, or if the intention of this reference is to direct the Code Enforcement Officer to review all nonconforming use changes as a business use change. Staff recommends the Board discuss this issue and if it is the determination the latter is true, include clarifying language prior to/after the code reference.*
7. *The code reference on line 333 is no longer necessary due to the inclusion of the Nonconforming Structures in the Shoreland or Resource Protection Overlay Zones ordinance within the Nonconforming Structures ordinance.*

*In addition to the general reorganization of the article, the proposed amendment includes several substantial updates to standards pertaining to the repair/expansion of nonconforming structures located within the Shoreland or Resource Protection Overlay Zone in order to comply with the most recent revision of the MDEP mandatory Chapter 1000 guidelines, revised January 2015. These proposed amendments are located at the proposed 16.7.3.3.2.E (lines 189 – 224) and are outlined below:*

1. *The change of “floor area and volume” to footprint.*
2. *Expansions of nonconforming structures are limited to a footprint of no more than 30% than what existed on January 1, 1989, or, a designated maximum footprint, whichever is greater, dependent on where the structure is located in relation to the protected resource.*
3. *Expansions of nonconforming structures are subject to a designated maximum building height dependent on where the structure is located in relation to the protected resource.*
4. *Expansion of nonconforming principal and accessory structures located within 25-feet of the protected resource is prohibited, with the exception of principal nonconforming structures that are located entirely within 25-feet of the protected resource.*
5. *Expansion of nonconforming accessory structures located closer to the protected resource than the principal structure is prohibited.*

**In addition to the above amendments, the current revision reflects comments from Board members during their 9/29/2016 review. Revisions are highlighted in yellow in the amendment, as well as outlined below.**

1. Code references were added to indicate where amendments originated from, or relocated to, as well as whether they were taken/moved verbatim, modified, or are as a requirement of MDEP.
2. Line 5 – Grammatical error – removed an unnecessary comma
3. Lines 76, 85, 99 – The Planning Board is referenced prior to the Board of Appeals, rather than after

4. Lines 105-107 – Sentence was identified as difficult to read/interpret and has been reworded to clarify intent and increase readability
5. Lines 142-144 – Previous amendment depicted “The proposed expansion:” following the sentence, prior to the list of criteria. The Board commented this was redundant, as the sentence itself identifies the list as the criteria for a CEO approved expansion.
6. Lines 180-183 – Replaced the word “must” with “may”. Replaced “herein” with a clarifying code reference. General reworking of the sentence to address wordiness.
7. Line 190 – The Board recommended a revision to the preface of the sentence to read “In addition to the standards in the above subsection”. As “above subsection” is singular, could be interpreted as a specific reference to 16.7.3.3.2.D, rather than 16.7.3.3.2.A – D. Staff proposes either including the specific subsections that are referenced as “above” (as depicted in the amendment) or, at a minimum, pluralizing “subsections” so it is clearly referencing multiple standards.
8. Lines 198, 242, 276 - Included alpha subsection to all references previously referred to as ‘16.7.3.3.1’.
9. Line 224 – Typo, replaced “withing” with “within”
10. Line 260 – Revised “damaged” to “damaged or destroyed” to remain consistent with the previous sentence.
11. Line 280 – Typo – removed the word “will”
12. Lines 299-300 – Minor rewording of the sentence.
13. Lines 393–395 and 441 – MDEP issued an approval to Title 16 on the condition the referenced language is added to the code. A copy of the approval letter with conditions dated April 2, 2016 is attached.
14. Lines 518-529 - A definition for “Freshwater Wetland (in the Shoreland and Resource Protection Overlay Zones)” was added to 16.2.2, to differentiate regulated vs nonregulated wetlands. Along with this, “coastal and forested” was added as a clarifying term when referring to wetland setbacks in the Shoreland and Resource Protection Overlay Zones (lines 201, 205, 213, 215, 216, 220, 232, 238, 243 and 250).
15. To address wordiness, the Board recommended a revision of lines 138-140 and proposed “Except where otherwise permitted in this Code, repair and/or expansion of a nonconforming structure must be reviewed and approved by the Board of Appeals. Except in cases where the structure is located in the Shoreland Overlay or Resource Protection Overlay Zone. In such cases the review will be conducted by the Planning Board.” After further review, staff suggests consideration of the revision as presented.

Lines 69-71 have been revised to match the language of 138-140, to provide consistency throughout the article.

Another option for the Board to consider is to define “Enforcement Authority” at the onset of the article, or, directly following the three types of nonconformance. This could eliminate redundancy. However, this could also create a challenge or confusion differentiating the authority

of the Code Enforcement Officer that is not necessarily consistent between ordinances (ex: relocation vs repair/reconstruction of a nonconforming structure)

16. The Board also may want to consider adding design standards such as 8:12 roof slope, as depicted in the proposed amendment, to ensure that new development of nonconforming structures within the Shoreland and Resource Protection Overlay Zones, in the absence of volume constraints, is still in keeping with the current character along the coastline.

**Recommendation**

If the Planning Board is amenable to the proposed amendments and/or along with any revisions they find is warranted, the Board can...

**...move to recommend to Town Council adoption for Town Code Amendments Title 16.7.3 Nonconformance and 16.2.2 Definitions, for October 27, 2016.**

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

2  
3 **16.7.3 Purpose.**

4 The purpose of this Code is to promote land use conformities. The purpose of this Article is to regulate  
5 nonconforming lots, uses, and structures, **uses, and lots, and,** to promote the following objectives:  
6

7 **16.7.3.1 Prohibitions and Allowances.**

8  
9 A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to  
10 become more nonconforming.

11  
12 B. Nonconforming vacant lots of record may be developed, maintained or repaired.

13  
14 C. Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming  
15 use, or be changed to a conforming use.

16  
17 **16.7.3.2 General**

18  
19 ~~16.7.3.2~~ **16.7.3.2.1 Transfer of Ownership.**

20 Legally nonconforming structures, lots, and uses may be transferred, and the new owner may continue  
21 the nonconforming use or continue to use the nonconforming structure and/or lot, subject to the  
22 provisions of this Code.

23  
24 ~~16.7.3.3~~ **16.7.3.2.2 Repair and Maintenance.**

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

29  
30 **16.7.3.2.3 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

31 A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking  
32 spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the  
33 requirements of this Code for both the original and addition or enlargement of the structure or use.  
34 **{moved from former 16.7.3.5.13}**

35  
36 ~~16.7.3.4~~ **Discontinued Resumption Prohibited.**

37 ~~A lot on, or structure in, which a nonconforming use is discontinued for a period exceeding one (1) year,~~  
38 ~~or which is superseded by a conforming use, loses its status as a nonconforming use. The uses of the~~  
39 ~~land or structure must thereafter meet the provisions of this Code. This provision does not apply to the~~  
40 ~~resumption of a use of a residential structure where it can be demonstrated that the structure has been~~  
41 ~~used or maintained for residential occupancy during the preceding five (5) year period.~~ **{moved to**  
42 **proposed 16.7.3.4.2}**

43  
44 ~~16.7.3.5~~ **Types of Nonconformance.** (Ordained 9-26-11; Effective 10-27-11) **{removed}**

45  
46 ~~16.7.3.5.1~~ **Nonconforming Use Continuance.**

47 ~~The use of land, or structure, lawful at the time such use or structure was created, may continue although~~  
48 ~~such use or structure does not meet the provisions of this Code.~~ **{moved to proposed 16.7.3.4.1}**

49

50 **16.7.3.5.2 – Nonconforming Use Expansion.**

51 Expansion of nonconforming uses is prohibited, except nonconforming residential uses may be  
52 expanded within existing residential structures or within expansions of such structures as allowed in  
53 Section 16.7.3.4., Nonconforming Residential Use in Commercial Zones Expansion. **{moved and**  
54 **modified to proposed 16.7.3.4.3}**  
55

56 **16.7.3.5.3 – Nonconforming Residential Use in Commercial Zones Expansion.**

57 Notwithstanding the above limitations on expansion of nonconforming use, a nonconforming residential  
58 use located within the Commercial zones may be expanded. Where the expansion of the residential use  
59 involves an expansion of a structure, the structure must be expanded in conformity with the dimensional  
60 requirements contained in this Code. If the proposed structure expansion cannot meet the dimensional  
61 requirements of this Code, the application must be submitted to the Board of Appeals for review as a  
62 Miscellaneous Variation Request. In reviewing all such applications, the Board of Appeals must use the  
63 criteria established herein, and then may approve proposed dimensional requirement variations. **{moved**  
64 **and modified to proposed 16.7.3.4.3 and 16.7.3.3.2.C}**  
65

66 **16.7.3.3 Nonconforming Structures**

67  
68 **16.7.3.5.4 16.7.3.3.1 Nonconforming Structure Relocation.**

69 Except where otherwise permitted in this Code, relocation of a nonconforming structure must be  
70 approved by the Board of Appeals or, in cases where the structure is located in the Shoreland or  
71 Resource Protection Overlay Zone, the Planning Board. **{moved and modified from former 16.7.3.5.4.A**  
72 **and 16.7.3.5.4.B}**  
73

74 A. A nonconforming structure may be relocated within the boundaries of the parcel on which the  
75 structure is located provided the site of relocation conforms to all dimensional requirements, to the  
76 greatest practical extent, as determined by the **Planning Board or Board of Appeals or Planning Board** (in  
77 cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone), and  
78 provided the applicant demonstrates the present subsurface sewage disposal system meets the  
79 requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or a new  
80 system can be installed in compliance with the law and said R<sub>1</sub> rules. In no case may the relocation of a  
81 structure be permitted that causes the structure to be more nonconforming. See Chapter 16.8, Article VII,  
82 for other specific requirements related to septic waste disposal systems.  
83

84 B. In determining whether the structure relocation meets the setback to the greatest practical extent, the  
85 **Planning Board or Board of Appeals or Planning Board** (in cases where the structure is located in a  
86 Shoreland Overlay or Resources Protection Overlay Zone.), must consider the following conditions: the  
87 size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the  
88 property and on adjacent properties, the location of the septic system and other on-site soils suitable for  
89 septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

90 1. The size of the lot;

91 2. The slope of the land;

92 3. The potential for soil erosion;

93 4. The location of other structures on the property and on adjacent properties;

94 5. The location of the septic system and other on-site soils suitable for septic systems;

95 6. The type and amount of vegetation to be removed to accomplish the relocation.  
96

97 C. When it is necessary to remove vegetation within the water or wetland setback area to relocate a  
98 structure, replanting of native vegetation to compensate for the destroyed vegetation is required. The

99 ~~Planning Board or Board of Appeals or Planning Board~~ (in cases where the structure is located in a  
100 ~~Shoreland Overlay or Resource Protection Overlay Zone~~) may restrict mowing around and pruning of the  
101 replanted native vegetation to encourage a more natural state of growth. Tree removal and Rreplanting is  
102 required as follows: (Effective 2/28/15)

103  
104 1. Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly  
105 marked with stakes and caution tape. All stakes, caution tape, silt fences, and such other materials used  
106 during construction to remain until all onsite work is completed. Written permission to remove such must  
107 be given by the Code Enforcement Officer. {moved and modified from former 16.7.3.5.4.C.3}

108  
109 ~~4.~~ 2. Trees removed to relocate a structure must be replanted with at least one native tree, six (6) feet in  
110 height, for every tree removed. If more than five trees are planted, no one species of tree can be used to  
111 make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from  
112 the water or wetland than the trees removed.

113  
114 ~~2.~~ 3. Other woody and herbaceous vegetation and ground cover that is removed, or destroyed, to  
115 relocate a structure must be reestablished. An area at least the same size as the area where vegetation  
116 and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback  
117 area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar  
118 to that disturbed, destroyed or removed.

119 ~~Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked~~  
120 ~~with stakes and caution tape. Removal of the stakes, caution tape, silt fences, and such other materials~~  
121 ~~used during construction, is required at the completion of the onsite work, but not before permission to~~  
122 ~~remove such has been given in writing by the Code Enforcement Officer. {moved and modified to~~  
123 ~~proposed 16.7.3.3.1.C.1}~~

124  
125 ~~3.~~ 4. Where feasible, when a structure is relocated on a parcel, the original location of the structure  
126 must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.

127  
128 D. If the total amount of floor area and volume footprint of the original structure can be relocated beyond  
129 the required setback area, no portion of the relocated structure may be constructed at less than the  
130 setback requirement for a new structure. ~~When it is necessary to remove vegetation to reconstruct a~~  
131 ~~structure, vegetation will be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure~~  
132 ~~Relocation. Application for a demolition permit for any structure that has been partially damaged must be~~  
133 ~~made to the Code Enforcement Officer. {moved to and modified to proposed 16.7.3.3.3.F and~~  
134 ~~16.7.3.3.3.D}~~

135  
136 ~~16.7.3.5.5~~ 16.7.3.3.2 **Nonconforming Structure Repair and/or Expansion.** (Ordained 9-26-11;  
137 Effective 6-28-11)

138 Except where otherwise permitted in this Code, repair and/or expansion of a nonconforming structure  
139 must be approved by the Board of Appeals or, in cases where the structure is located in the Shoreland or  
140 Resource Protection Overlay Zone, the Planning Board.

141  
142 The Code Enforcement Officer may approve the repair and/or expansion of a nonconforming structure  
143 provided the proposed expansion meets all of the following criteria:

- 144 1. A vertical expansion that follows the existing building footprint;  
145 2. Will not result in setbacks less than those existing;  
146 3. Is not located in the Shoreland Overlay or Resource Protection Overlay Zone

148 This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure  
149 permitted to be closer to a water body or to a principal structure in accordance with Table 16.9 – Minimum  
150 Setbacks from Wetlands and Water Bodies. {moved and modified from former 16.7.3.5.B}

151  
152 A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with  
153 the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed  
154 expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the  
155 Board of Appeals or the Planning Board (~~in cases where the structure is located in a Shoreland Overlay~~  
156 ~~or Resources Protection Overlay Zone~~) will review such expansion application and may approve  
157 proposed changes provided the changes are no more nonconforming than the existing condition and the  
158 Board of Appeals or the Planning Board (~~in cases where the structure is located in a Shoreland Overlay~~  
159 ~~or Resources Protection Overlay Zone~~) makes its decision per section 16.6.6.2.

160  
161 ~~B. If the proposed expansion of a structure is: (1) a vertical expansion that follows the existing building~~  
162 ~~footprint and (2) will not result in setbacks less than those existing, approval by the Board of Appeals is~~  
163 ~~not required if the structure is not located in a Shoreland Overlay or Resources Protection Overlay Zone.~~  
164 ~~Applications for such development will be reviewed and may be approved by the Code Enforcement~~  
165 ~~Officer or the Planning Board if the structure is located in a Shoreland Overlay or Resources Protection~~  
166 ~~Overlay Zone. This subsection does not apply to any proposed vertical expansion of a patio, deck or~~  
167 ~~accessory structure permitted to be closer to a water body or to a principal structure in accordance with~~  
168 ~~Table 16.9 – Minimum Setbacks from Wetlands and Water Bodies. {moved and modified to proposed~~  
169 ~~16.7.3.3.2}~~

170  
171 ~~C. B.~~ Except in the Residential - Village (R-V) zone, minimum setbacks of residential storage sheds that  
172 are less than one hundred-twenty-one (121) square feet, one-story residential garages that are less than  
173 five hundred and seventy-seven (577) square feet, and decks less than two hundred fifty-one (251)  
174 square feet may be one-half the minimum rear and side yard setbacks, providing the lots are legally  
175 nonconforming.

176  
177 C. Where the expansion of the residential use within the Commercial Zones involves an expansion of a  
178 structure, the structure must be expanded in conformity with the dimensional requirements contained in  
179 this Code. If the proposed structure expansion cannot meet the dimensional requirements of this Code,  
180 the application may be submitted to the Board of Appeals for review as a Miscellaneous Variation  
181 Request. In reviewing all such applications, the Board of Appeals must use the criteria established in  
182 16.7.3.3.2, Nonconforming Structure Repair and/or Expansion, and then may approve the proposed  
183 variations to the dimensional requirements. {moved and modified from former 16.7.3.5.3}

184  
185 D. The addition of steps and landings, exterior to the structure does not constitute expansion. Such  
186 steps are not to be considered part of the structure for such determination. Step landings may not exceed  
187 three feet by three feet (3'x3') in size. (Ordained 9-26-11; Effective 10-27-11) {moved from former  
188 16.7.3.5.14}

189  
190 E. In addition to the standards in the above subsections 16.7.3.3.2.A-D, the expansion of nonconforming  
191 structures located in the Shoreland or Resource Protection Overlay Zone must meet the following: {the  
192 following proposed 16.7.3.3.2.E.1 – 4 are moved and modified from former 16.7.3.6.1 and  
193 incorporate new amendments, to be in compliance with Chapter 1000 standards}

194  
195 1. Wherever a new, enlarged, or replacement foundation is constructed under a nonconforming  
196 structure the structure and new foundation must be placed such that setback requirements are met to the

197 greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified  
198 in Title 16.7.3.3.1.B, Nonconforming Structure Relocation.

199  
200 2. Expansion of any portion of a structure that is located within 25 feet of the normal high-water line of a  
201 water body, tributary stream, or upland edge of a coastal or freshwater wetland is prohibited.

202  
203 3. Notwithstanding Title 16.7.3.3.2.E.2 above, if a legally existing nonconforming principal structure is  
204 entirely located less than 25-feet from the normal high-water line of a waterbody, tributary stream, or  
205 upland edge of a coastal or freshwater wetland, that structure may be expanded as follows,

206  
207 a. the maximum total footprint for the principal structure may not be expanded to a size greater than 800  
208 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The  
209 maximum height of the principal structure may not be made greater than 15 feet or the height of the  
210 existing structure, whichever is greater. Roof slope must not be less than an 8:12 pitch

211  
212 4. Expansion of an accessory structure that is located closer to the normal high-water line of a water  
213 body, tributary stream, or upland edge of a coastal or freshwater wetland than the principal structure is  
214 prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or  
215 coastal or freshwater wetland setback requirement. All other legally existing nonconforming principal and  
216 accessory structures that do not meet the water body, tributary stream, or coastal or freshwater wetland  
217 setback requirements may be expanded or altered as follows:

218  
219 a. For structures located less than 100 feet from the normal high-water line of a water body, tributary  
220 stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all  
221 structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint  
222 that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be  
223 made greater than 20 feet, or the height of the existing structure, whichever is greater. Roof slope must  
224 not be less than an 8:12 pitch

225  
226 b. For structures that are located within the Resource Protection Overlay Zone, the maximum combined  
227 total footprint for all structures may not be expanded to a size greater than 1,500 square feet, or 30%  
228 larger than the footprint that existed at the time the Resource Protection Overlay Zone was established,  
229 whichever is greater. The maximum height of any structure may not be greater than 25 feet, or the height  
230 of the existing structure, whichever is greater, except that any portion of those structures located less  
231 than 100 feet from the normal high water line of a waterbody, tributary stream, or upland edge of a  
232 coastal or freshwater wetland must meet the footprint, roof pitch and height limits in 16.7.3.3.2.E.4.a,  
233 above.

234  
235 **16.7.3.5.6 16.7.3.3.3 Nonconforming Structure Reconstruction.** (Ordained 1/28/15; 9/28/15)

236  
237 A. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is  
238 located less than the required setback from a water body, tributary stream, or coastal or freshwater  
239 wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market  
240 value of the structure before such damage, destruction or removal, may be reconstructed or replaced  
241 provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or  
242 removal, and provided that such reconstruction or replacement is in compliance with the water body,  
243 tributary stream or coastal or freshwater wetland setback requirement to the greatest practical extent as  
244 determined by the Planning Board. In determining whether the structure reconstruction meets the setback  
245 to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in

246 addition to the criteria in Section 16.7.3.3.1.B Nonconforming Structure Relocation, the physical condition  
247 and type of foundation present, if any. {moved and modified from former 16.7.3.5.6.F}  
248

249 B. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is  
250 located less than the required setback from a water body, tributary stream, or **coastal or freshwater**  
251 **wetland** and removed, damaged or destroyed by any cause by 50% or less of the market value of the  
252 structure before such damage, destruction or removal, may be reconstructed in-place if a permit is  
253 obtained from the Code Enforcement Officer within twelve (12) months of the established date of damage  
254 or destruction.  
255

256 C. Outside of the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which  
257 is removed, damaged or destroyed by any cause may be restored or reconstructed in-place if a permit is  
258 obtained from the Code Enforcement Officer within eighteen (18) months of the date of said removal,  
259 damage or destruction. Such restoration or reconstruction must not make the structure more  
260 nonconforming than the prior nonconforming structure. ~~Nothing in this section prevents the demolition of~~  
261 ~~the remains of any building so damaged or destroyed. {moved and modified to proposed 16.7.3.3.3.D}~~  
262

263 D. Nothing in this section prevents the demolition of the remains of any building damaged or destroyed.  
264 Application for a demolition permit for any structure that has been partially damaged or destroyed must be  
265 made to the Code Enforcement Officer. {moved and modified from former 16.7.3.5.6.C and  
266 16.7.3.5.6.D}  
267

268 ~~D~~ E. In the Shoreland or Resource Protection Overlay Zone(s), if **if** the total amount of floor area and  
269 ~~volume **footprint** of the original structure can be reconstructed beyond the required setback area, no~~  
270 ~~portion of the reconstructed structure may be reconstructed at less than the setback requirement for a~~  
271 ~~new structure. **If the reconstructed or replacement structure is less than the required setback, it may not**~~  
272 ~~**be any larger than the original structure, except as allowed in Title 16.7.3.3.2, Nonconforming Structure**~~  
273 ~~**Repair and Expansion. {moved and modified from former 16.7.3.5.6.E}** When it is necessary to remove~~  
274 ~~vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section~~  
275 ~~16.7.3.5.4.C, Nonconforming Structure Relocation. Nothing in this section prevents the demolition of the~~  
276 ~~remains of any building so damaged or destroyed. **{moved and modified to proposed 16.7.3.3.3.F and**~~  
277 ~~**16.7.3.3.3.D}**~~  
278

279 F. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in  
280 accordance with Section 16.7.3.3.1.C, Nonconforming Structure Relocation. {moved and modified from  
281 former 16.7.3.5.4.D and 16.7.3.5.6.D}  
282

283 ~~E~~ G. **Except where expressly permitted in this code, in in** no case **will may** a structure be reconstructed or  
284 ~~replaced so as to increase its non-conformity. In the Shoreland and Resource Protection Overlay Zones,~~  
285 ~~if the reconstructed or replacement structure is less than the required setback it may not be any larger~~  
286 ~~than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures~~  
287 ~~Repair and/or Expansion, as determined by the nonconforming floor area and volume of the~~  
288 ~~reconstructed or replaced structure at its new location. **{moved and modified to proposed 16.7.3.3.3.E}**~~  
289

290 ~~F~~ In determining whether the structure reconstruction or replacement meets the setback to the greatest  
291 practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria  
292 in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation  
293 present, if any. **{moved and modified proposed 16.7.3.3.3}**  
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**16.7.3.4 Nonconforming Uses**

**16.7.3.4.1 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. {moved from former 16.7.3.5.1}

**16.7.3.4.2 Discontinued Resumption Prohibited.**

A lot 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 permitted 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. {moved and modified from former 16.7.3.4}

**16.7.3.4.3 Nonconforming Use Expansion.**

Expansion of nonconforming uses is prohibited, except nonconforming residential uses may be expanded within existing residential structures. Where the expansion of a nonconforming residential use involves the expansion of a structure, the structure must be expanded in conformity with all requirements as outlined in 16.7.3.3 Nonconforming Structures. {moved and modified from former 16.7.3.5.2}

**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. {moved and modified to proposed 16.7.3.4.3}

**16.7.3.5.8-16.7.3.4.4 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.~~

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

346  
347 C. ~~By Planning Board.~~ Within areas regulated by Shoreland Overlay Zone or Resource Protection  
348 Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the  
349 approval of the Planning Board ~~per Section 16.7.3.6.2.~~

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352 **16.7.3.5 Nonconforming Lots**

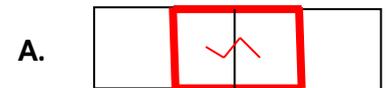
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354 ~~16.7.3.5.1~~ **16.7.3.5.1 Nonconforming Lots of Record.** (Ordained 1-23-12; Effective 2-23-12)

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

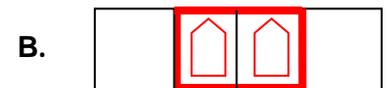
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363 ~~16.7.3.5.10~~ **16.7.3.5.2 Contiguous Non-Conforming Lots.** (Effective 2/28/15)

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



372 B. Contiguous Built Upon Nonconforming Lots. If two or  
373 more contiguous lots or parcels are in a single or joint  
374 ownership of record prior to July 13, 1977 and prior to  
375 December 15, 1973 for properties within the Shoreland Overlay  
376 Zone, if all or part of the lots do not meet the dimensional  
377 requirements of this Title, and if a principal use or structure  
378 exists on each lot, the nonconforming lots may be conveyed  
379 separately or together, provided that the State Minimum Lot  
380 Size Law (12 M.R.S. §4807-A through 4807-D) and the State of  
381 Maine Subsurface Wastewater Disposal Rules are complied  
382 with.



383  
384 C. Contiguous Partially Built Upon Lot. If two or more  
385 contiguous lots or parcels are in a single or joint ownership of  
386 record at the time of or since adoption or amendment of this  
387 Title, if any of these lots do not individually meet the



388 dimensional requirements of this Code or subsequent  
389 amendments, and if one or more of the lots are vacant or  
390 contain no principal structure, the lots shall be combined to the  
391 extent necessary to meet the applicable dimensional  
392 requirements of this Title.

393

394 This subsection does not apply:

395 1. ~~to any Planning Board approved subdivision which was recorded in the York County Registry of~~  
396 ~~Deeds on, or before July 13, 1977 or prior to December 15, 1973 for properties within the Shoreland~~  
397 ~~Overlay Zone~~ **to any Planning Board approved subdivision located entirely outside of the Shoreland**  
398 **Overlay Zone and Resource Protection Overlay Zone, and which was recorded with the York County**  
399 **Registry of Deeds on, or before, July 13, 1977; {new amendment; required by MDEP department**  
400 **order #03-2015}**

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

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

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

408

409 ~~16.7.3.5.11~~ **16.7.3.5.3 Single Lot Division of a Nonconforming Lot. (Ordained 1-23-12; Effective 2-23-**  
410 **12)**

411

412 If two principal structures existing on a single lot legally created when recorded, each may be sold on a  
413 separate lot provided the Board of Appeals determines that each resulting lot is as conforming as  
414 practicable to the dimensional requirements of this Code. If three or more principal structures existing on a  
415 single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board  
416 determines that each resulting lot is as conforming as practicable to the dimensional requirements of this  
417 Code.

418 ~~(Ordained 1-23-12; Effective 2-23-12)~~ **{included with title to provide consistency throughout the**  
419 **article}**

420

421 ~~16.7.3.5.12~~ **16.7.3.5.4 Adjustment of Common Boundary Line of Nonconforming Lots. (Effective:**  
422 **2/28/15)**

423

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

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

428

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

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

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

435

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

440 a. each resulting lot is not less than 20,000 S.F. in lot size and not less than 100 feet in shore  
441 frontage<sup>2,3</sup>; and

442 b. a lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for  
443 principal structures and uses remains conforming to those requirements<sup>1</sup>; and

444 c. common boundary lines may not be adjusted when both subject lots are non-conforming per state  
445 minimum lot size requirement **MDEP Mandatory Shoreland Zoning minimum lot standards.<sup>3</sup> {new  
446 amendment; required by MDEP department order #03-2015}**

447

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

451 <sup>2</sup> Title 16.7.3.5.12.A.3.a is allowed only when both subject lots are under the same single or joint  
452 ownership.

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

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

459

460 ~~16.7.3.5.13 Nonconforming Parking or Loading Space. (Ordained 9-26-11; Effective 10-27-11)~~

461 ~~A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking~~  
462 ~~spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the~~  
463 ~~requirements of this Code for both the original and addition or enlargement of the structure or use.~~

464 ~~**{moved to proposed 16.7.3.2.3}**~~

465

466 ~~16.7.3.5.14 Nonconforming Steps. (Ordained 9-26-11; Effective 10-27-11)~~

467 ~~The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps~~  
468 ~~are not to be considered part of the structure for such determination. Step landings may not exceed three~~  
469 ~~feet by three feet (3'x3') in size. **{moved to proposed 16.7.3.3.2.D}**~~

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471 ~~16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.~~

472 ~~(Ordained 9-26-11; Effective 10-27-11)~~

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**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. **(moved and modified to proposed 16.7.3.3.2.E)**

**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. **(moved and modified to proposed 16.7.3.4.4)**

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**16.2.2 Definitions**

**Freshwater wetland** means non-coastal types of wetlands, including, but not limited to, freshwater swamps, marshes, bogs and similar areas.

**Freshwater wetland (in the Shoreland and Resource Protection Overlay Zones) means freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are**

- 520 1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface  
521 water body, excluding any river, stream or brook, such that in a natural state, the combined  
522 surface area is in excess of 10 acres; and  
523  
524 2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to  
525 support, and which under normal circumstances do support, a prevalence of wetland vegetation  
526 typically adapted for life in saturated soils.

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528 Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the  
529 criteria in this definition.  
530

531 **Functionally Water-Dependent Uses** means those uses that require, for their primary purpose, location  
532 on submerged lands or that require direct access to, or location in, coastal and inland waters and which  
533 cannot be located away from these waters. The uses include, but are not limited to, commercial and  
534 recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and  
535 wholesale fish marketing facilities, waterfront dock and port facilities, excluding recreational boat storage  
536 and retail and wholesale fish marketing facilities, waterfront dock and port facilities, excluding recreational  
537 boat storage buildings, shipyards and boat building facilities, marinas, navigation aids, basins and  
538 channels, industrial uses dependent upon water-borne transportation or requiring large volumes of  
539 cooling or processing water and which cannot reasonably be located or operated in an inland site, and  
540 uses which primarily provide general public access to marine or tidal waters.