

An Ordinance to amend the Town Code, Chapter 225-14, nonconforming uses, structures, and lots of record by clarifying standards for the conformance of nonconforming structures.

§ 225-14 **Nonconforming uses, structures and lots of record.**

A. General.

- (1) Continuance, enlargement and reconstruction. Any nonconforming use or structure may be continued but may not be extended, reconstructed, enlarged or structurally altered except as specified below by this chapter or as required by Federal, State or local codes, rules or laws.
- (2) Transfer of ownership. Nonconforming structures, nonconforming lots of record and nonconforming uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this chapter.
- (3) Restoration or replacement.
  - (a) This chapter allows the normal upkeep and maintenance of nonconforming uses and structures; repairs, renovations or modernizations which do not involve expansion of the nonconforming use or structure; and such other changes in a nonconforming use or structure as federal, state or local building and safety codes may require.
  - (b) Any nonconforming use or structure which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his agent may be restored or reconstructed within one year of the date of said damage or destruction, provided that:
    - [1] Any nonconforming structure shall not be enlarged except in conformity with this chapter and the Maine State Plumbing Code; and
    - [2] Any nonconforming use shall not be expanded in area.
  - (c) Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed.

B. Nonconforming use.

- (1) Resumption prohibited. A building or structure in which a nonconforming use is discontinued for a period exceeding two years, or which is superseded by a conforming use, may not again be devoted to a nonconforming use, even if the owner has not intended to abandon the use. In the LV, MV, VC, LI, R4 and BP2 Zones, a building or structure in which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use, even if the owner has not intended to abandon the use. **[Amended 5-20-2009 STM, Art. 15]**
- (2) A structure nonconforming as to use. Except for single-family dwellings, a building or structure, nonconforming as to use, shall not be enlarged unless the nonconforming use is terminated. Single-family dwellings, which are nonconforming uses, may be enlarged as long as the dimensional requirements of the district in which they are located are met. A nonconforming use or part of a building or structure shall not be extended throughout other parts of the building or structure unless those parts of the building or structure were manifestly arranged or designed for such use prior to the adoption of this chapter or of any amendment making such use nonconforming.
- (3) Change of use. A nonconforming use may be changed to another nonconforming use only when the Board of Appeals determines, pursuant to the procedures of Article X of this chapter, that the impact of the new use on adjacent properties and the Town is less adverse than the former use and that the existing use was legally established, was made nonconforming by the adoption or amendment of

Chapter **225** and is not a home occupation. In making this determination, the Board shall consider traffic, hours of operation, amount and location of parking, lighting, noise, odors, vibrations, dust, smoke, air discharges, rate of surface water runoff and the potential for erosion. Once the Board of Appeals has changed the use as described above, the former nonconforming use shall be considered abandoned. In the LV, MV, VC, LI, R4 and BP2 Zones, any change of use shall be to a conditional or permitted use for that zone. **[Amended 5-16-2001 STM, Art. 27; 5-20-2009 STM, Art. 15]**

- (4) Use of land.
  - (a) A nonconforming use of land may not be extended into any part of the remainder of a lot of land. A nonconforming use of land which is accessory to a nonconforming use of a building shall be discontinued at the same time the nonconforming use of the building is discontinued.
  - (b) In the case of earth removal operations, the removal of earth may not be extended as a nonconforming use beyond the required setback lines of the specific parcel upon which such operations were in progress when such use became nonconforming. Adjacent parcels in the same or different ownership shall not be eligible for exemption under the nonconforming use provisions unless earth removal operations were in progress on these parcels before these provisions were enacted. The provision of required off-street parking for an existing nonconforming use shall not be considered the expansion of said use.
- C. Nonconforming structures. (This subsection pertains to dimensional requirements. Applications regarding nonconforming use shall be reviewed under the provisions above.)
  - (1) Enlargements controlled.
    - (a) An existing structure that does not meet ~~the required setbacks~~one or more of the dimensional requirements of the zone, may be expanded vertically and horizontally as long as ~~no portion of the expansion is any closer to the property line than~~does not increase the nonconformity of the existing structure or create a new nonconformity. In no case shall enlargement result in a separation of less than 15 feet to adjacent structures. **[Amended 1-23-2008 STM, Art. 2]**
    - (b) The addition of an open patio with no structures elevated above ground level shall not constitute the expansion of a nonconforming structure, except in the shoreland zone. The addition of steps or the enclosure of an existing porch shall not constitute the expansion of a nonconforming structure. But the addition of a deck shall constitute the expansion of a nonconforming structure and shall meet all the dimensional requirements of this chapter. **[Amended 6-1-1993 STM, Art. 20]**
    - (c) The placing of a foundation below a lawfully existing nonconforming structure shall not constitute the expansion of the structure so long as the first floor space of the structure is not increased.
    - (d) Construction or expansion of a foundation under an existing dwelling which expands habitable space shall be considered an expansion and shall be subject to the state plumbing laws (30 M.R.S.A. § 3221, Subsection 4) requiring new soils documentation.
  - (2) Discontinuance. Discontinuance of the use of a legally existing nonconforming structure shall not constitute abandonment of the structure. Conforming use of the structure may be commenced at any time.
  - (3) Lack of required parking or loading space. A building or structure which is nonconforming as to the requirements for off-street parking and/or loading space shall not be enlarged, added to or altered unless off-street parking and/or loading space is provided to bring parking and/or loading space into conformance with the requirements of this chapter for both the addition or alteration and for the original building or structure, or a variance is obtained.
  - (4) Conditional use. Existing nonconforming structures may receive conditional use approval in

accordance with state law and the provisions of this chapter, notwithstanding the fact that the existing structure may not be in conformance in regards to setbacks, building height and lot coverage.

D. Nonconforming lots of record.

- (1) Vacant lots. A vacant nonconforming lot may be built upon, provided that such lot is in separate ownership and not contiguous with any other vacant lot in the same ownership, and that all provisions of this chapter except lot size and frontage can be met. Variance of setback or other requirements not involving area or width shall be obtained only by action of the Board of Appeals.
  - (2) Built lots. A nonconforming lot that was built upon prior to the enactment or subsequent amendment of this chapter is subject to the following restrictions. The structure(s) may be repaired, maintained or improved, and may be enlarged in conformity with all dimensional requirements of this chapter except lot area, lot width or lot frontage. If the proposed enlargement of the structure(s) cannot meet the dimensional requirements of this chapter a variance shall be obtained from the Board of Appeals.
  - (3) Contiguous built lots. If two or more contiguous lots or parcels are in single or joint ownership of record at the time of adoption of this chapter, if all or part of the lots do not meet the dimensional requirements of this chapter, and if a principal use exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and Plumbing Code are complied with. If two or more principal uses existed on a single lot of record on the effective date of this chapter, each may be sold on a separate lot.
  - (4) 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 chapter, if either or both of these lots do not individually meet the dimensional requirements of this chapter or subsequent amendments, and if one or more of the lots are vacant or contain only an accessory structure, the lots shall be combined to the extent necessary to meet the dimensional standards, except where rights have vested, or the lots have frontage on the parallel streets and state laws are complied with.
- E. Vested rights. Nonconforming use rights cannot arise by the mere filing of a notice of intent to build, an application for building permits or an application for required state permits and approvals. Such rights arise when actual construction has begun, or in the case of pending applications, when the review process on a complete application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both state and local. An application shall be deemed complete when so designated by a formal vote of the Planning Board after review by the criteria stated in Article **IX** and the performance standards contained in this chapter.