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## Non-Conforming Structures

Zoning Chapter 225-6; 225-14 with added commentary

### **225-6: Definitions**

**BUILDING:** Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or personal property.

**NONCONFORMING CONDITION:** Nonconforming lot, structure or use which is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendment took effect. [Added 11-13-2008 STM, Art. 7]

**NONCONFORMING STRUCTURE:** A structure that does not meet any one or more of the following dimensional requirements: setbacks, height and lot coverage. It is allowed solely because it was in lawful existence at the time this chapter or subsequent amendments took effect. [Amended 5-18-2016 STM, Art. 10]

**STRUCTURE:** Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. [Amended 11-13-2008 STM, Art. 7]

### **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 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.

- ❖ **This restriction to expansion of a nonconforming structure is modified by amendment to section (C) 1-23-2008 which does allow expansion of the nonconforming structure**

(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:

- ❖ **Prior to amendment of section (C), there was little tolerance for nonconforming structures, they could be maintained but not expanded, and even destruction by an unforeseen cause such as fire would only allow replacement to the extent of the original footprint and volume dimensions.**

**With the amendment of section (C), nonconforming structure owners could expand or replace to the same extent as conforming structure owners provided the nonconforming condition was not made worse. There are no limitations built into the section addressing percentages of the original structure that must remain like in shoreland zoning (225-19), as a result the structure can be replaced in total to its original nonconformity. With this came confusion to the intent of the term “willful act” as used in this subsection, as written, removal and replacement would appear to be a violation of this subsection but the end result, a new structure, would conform to the amended section (C).**

**This office has determined it is no longer the intent of this chapter to eliminate nonconforming structures and has made the following determination:**

- **If a building permit to construct a replacement structure is obtained prior to removal, the existing structure may be removed as a single step and the new structure built to the existing structures nonconforming condition, this removal is not considered a willful act. Note that any time limits for start and completion under the permit are subject to standards contained in the adopted building code.**
- **If no building permit is issued for a replacement structure and the existing nonconforming structure is removed, this is a willful act of removal and any new structures must be constructed in conformity.**

[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.

**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 one or more of the dimensional requirements of the zone may be expanded vertically and horizontally as long as the expansion does not increase the nonconformity of the existing structure or create a new nonconformity. [Amended 1-23-2008 STM, Art. 2; 5-18-2016 STM, Art. 11]

❖ **This section was amended 1-23-2008 and again 5-18-2016. Prior to the amendments, the section stated: “A nonconforming structure shall not be added to or enlarged unless such addition or enlargement conforms to all the regulations of the zone in which it is located, or a variance or administrative exception is obtained. In addition, State laws must be adhered to.” The 2008 amendment made this section less strict by removing the requirement for the expansion to “conform” and replacing it with language allowing it to be no closer to the property line. This section was further amended 5-18-2016 and now encompasses all types of expansion.**

❖ **Question: Can a nonconforming structure be expanded under this section into any type of structure, such as a building from a parking lot?**

**Answer: No. As defined, all buildings are structures but not all structures are buildings; the ordinance regulates buildings to a higher degree than most structures. Therefore, a nonconforming structure can only be expanded into a like structure such as a building into a larger building, a foundation into a larger foundation, a parking lot into a larger parking lot, etc. Example: A paved parking lot and a foundation are structures by definition. If a portion of the parking lot or foundation was nonconforming due to setback, a building cannot be created on the nonconforming portion under this section.**

- (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.

- (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.