

Appendix 6

NONCONFORMING USES AND STRUCTURES

5 EXISTING LOTS ON FOSS POND

A. PURPOSE AND SCOPE

This section governs structures, uses and lots that were created before the Commission's rules or laws were established, but which do not meet the current rules or laws. This section also governs structures, uses and lots that met the Commission's rules or laws when built or created, but no longer are in conformance due to subsequent revisions to those rules or laws.

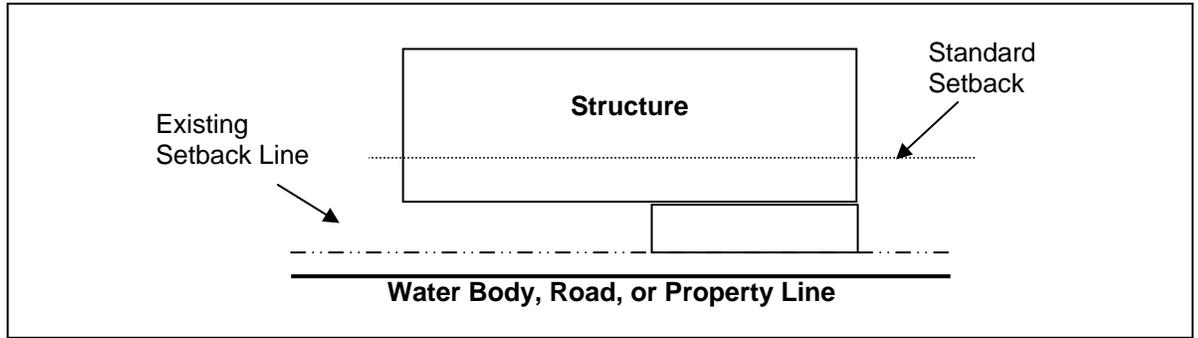
In accordance with 12 M.R.S.A. §685-A(5), legally existing nonconforming structures, uses and lots will be allowed to continue. Renovations of these structures, and the construction of certain accessory buildings, are allowed without a permit. However, 12 M.R.S.A. §685-B(7) authorizes the Commission to regulate or prohibit extensions, enlargement, or movement of nonconforming uses and structures. This section clarifies which activities are allowed with a permit, without a permit, or are prohibited in the modification of a legally existing nonconforming structure, use or lot.

B. GENERAL

1. **Criteria for Approval.** Permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in this Appendix 6. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. §685-B(4) and demonstrate that:
 - a. the project will not adversely affect surrounding uses and resources: and
 - b. there is no increase in the extent of nonconformance, except in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a water body setback.

2. **Extent of Nonconformance with Respect to Setbacks.** Appendix 4,D of these rules establishes minimum setbacks from water bodies, roads and property boundaries. Where legally existing, nonconforming structures do not meet these setbacks, an existing setback line will be established. The existing setback line will run parallel to the water body, road or property boundary at a distance equal to the closest point of the existing structure (including attached decks or porches) to the feature from which the setback is established. This is shown graphically below in Appendix 6, B-1.

3.



Appendix 6,B-1. Determination of setback.

Subject to the other requirements in this section, a nonconforming structure may be expanded up to the existing setback line without being considered to be more nonconforming than the original structure. Expansions between the existing setback line and the water body, road or property boundary will be considered to increase nonconformity, and will not be allowed.

4. **Transfer of Ownership.** Legally existing, nonconforming structures, uses, and lots may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming lot or structure as before, subject to the provisions of the Commission's rules and the Concept Plan.
5. **Normal Maintenance and Repair.** A permit is not required for the normal maintenance and repair of legally existing nonconforming structures, structures associated with nonconforming uses, or structures on nonconforming lots.
6. **Renovation.** A permit is not required for the renovation of legally existing nonconforming structures, structures associated with nonconforming uses, or structures on nonconforming lots.
7. **Waiver of Road Setbacks.** To allow a structure to become either conforming or less nonconforming to the water body setback, the Commission may reduce the road setback to no less than 20 feet in cases of reconstruction or relocation of legally existing structures or construction of new accessory structures on developed, legally existing nonconforming lots.
8. **Conformance with Maine Subsurface Waste Water Disposal Rules.** All changes to legally existing nonconforming structures, structures for nonconforming uses or structures on nonconforming lots must comply with the Maine State Subsurface Waste Water Disposal Rules (144A CMR 241), including changes that do not require a permit under this rule.
9. **Conflicting Requirements.** In cases where two or more provisions of this section apply to a particular structure, use or lot, the more restrictive provision shall control.

C. NONCONFORMING STRUCTURES

1. **Expansion.** A permit is required for the expansion of a nonconforming structure. In addition to meeting permit requirements, expansions must also comply with the following limitations. These limitations do not apply to water dependent uses as defined in the Commission’s Rule and Standards, Chapter 10, Section 10.02.
 - a. **Certain Expansions Prohibited.** If any portion of a structure is located within 25 feet, horizontal distance, of the normal high water mark of a water body, expansion of that portion of the structure is prohibited. That portion beyond 25 feet may be expanded provided the size limitations in Appendix 6,C,1,b are met.
 - b. **Size of Structures Near Water Bodies Limited.** The maximum size of expansions of nonconforming structures is limited within areas described by either of the categories below:
 - (1) The area within 100 feet, horizontal distance, of the normal high water mark of bodies of standing water 10 acres or greater in size or flowing waters draining 50 square miles or more.
 - (2) The area within 75 feet, horizontal distance, of the normal high water mark of tidal waters or bodies of standing water less than 10 acres in size (but excluding bodies of standing water less than three acres in size not fed or drained by a flowing water).

Legally existing, principal and accessory structures located within these areas may be expanded subject to the other requirements of this section, provided that lot coverage limitations and other applicable land use standards are met. The maximum height of all structures within these areas shall be 25 feet, or existing structure height, whichever is greater. The maximum combined footprint for all structures within these areas may not exceed the limits in Appendix 6,C-1.

Closest Distance of Expansion from Water Body	Maximum Combined Footprint for all Structures not Meeting Water Body Setbacks
Greater than 25 and less than 50 feet.	750 square feet
Between 50 and 75 feet.	1,000 square feet
Greater than 75 and less than 100 feet (if applicable setback is more than 75 feet).	1,500 square feet

Appendix 6,C-1. Limitations on size of structures near water bodies.

2. **Reconstruction or Replacement.** A legally existing, nonconforming structure may be reconstructed or replaced with a permit, provided that the permit

application is completed and filed within two years of the date of damage, destruction or removal, and provided that the structure was in regular active use within a two year period immediately preceding the damage, destruction, or removal.

- a. **Meeting Setbacks to the Greatest Extent Possible.** Reconstruction or replacement must comply with the Concept Plan current minimum setback requirements to the greatest possible extent. In determining whether the proposed reconstruction or replacement meets the setback to the greatest possible extent, the Commission may consider the following factors:
 - size of lot,
 - slope of the land,
 - potential for soil erosion and phosphorus export to a water body,
 - location of other legally existing structures on the property,
 - location of the septic system and other on-site soils suitable for septic systems,
 - type and amount of vegetation to be removed to accomplish the relocation, and
 - physical condition and type of existing foundation, if any.
 - b. **Reconstruction of Attached Decks.** Decks attached to a legally existing, nonconforming structure may be reconstructed in place with a permit, except that replacement of any portion of a deck that extends into or over the normal high water mark is prohibited.
 - c. **Permanent Foundations.** The addition of a permanent foundation beneath a legally existing, nonconforming structure constitutes a reconstruction subject to the provisions in Papendix 6, C,2,a.
 - d. **Boathouses.** Except in a D-MT subdistrict, Boathouses shall not be reconstructed or replaced. Normal maintenance and repair, and renovation of a legally existing boathouse is allowed without a permit.
3. **Relocation.** In order to make it conforming or less nonconforming, a legally existing, nonconforming structure may be relocated within the boundaries of the lot upon the issuance of a permit. Cleared openings created as part of a relocation shall be stabilized and revegetated. Relocated structures that are altered such that they meet the definition of reconstruction shall meet the requirements of Appendix 6, C,2.
 4. **Change of Use of a Nonconforming Structure.** The use of a nonconforming structure shall not be changed without permit approval.
 5. **New, Detached Accessory Structures.** New, detached accessory structures associated with pre-1971 residences and operating farms are allowed without a permit if they meet all setbacks, do not cause lot coverage requirements to be exceeded and otherwise conform with the Commission's rules. Permits are required for all other new detached accessory structures.

The construction of new, detached accessory structures that do not meet water body setbacks is allowed with a permit only if the structure cannot be physically sited on the lot to meet the water body setback requirement. In this case, the new accessory structure shall not be located closer to the normal high water mark than the principal structure, shall not be located within 25 feet of the normal high water mark, and shall be of a size and height that, when combined with legally existing principal buildings will not exceed the size and height requirements of Appendix 6, C,1,b.

6. **Enclosure of Decks and Porches.** A permit is required for the complete or partial enclosure of decks and porches. Enclosure of decks and porches is not an expansion of floor area. The enclosure of the structure which results in additional stories is considered an expansion and must meet the provisions of Section Appendix 6,C,1,b. If any portion of the structure is located within 25 feet, horizontal distance, of the normal high water mark of a water body, complete or partial enclosure of that portion of the structure is prohibited.

D. NONCONFORMING USES.

1. **Expansion of Use.** Extension, enlargement or expansion of nonconforming uses requires a permit.
2. **Change in Use.** A nonconforming use may not be changed to another use without a permit.
3. **Resumption of Use.** A nonconforming use shall not be resumed if it has been discontinued or abandoned for a period exceeding two years, or if it has been superseded by a conforming use.
4. **Special Exceptions.** Any use granted a special exception permit shall be deemed a conforming use [see 12 M.R.S.A. §685-A(10)].

E. NONCONFORMING LOTS.

1. **Expansion of Structures.** Structures on nonconforming lots may not be expanded without a permit.
2. **Creation of Nonconforming Lots.** A lot which has an established use or structure to which dimensional standards apply may not be divided or altered in a manner that makes the lot, or any structure or use, nonconforming or more nonconforming.
3. **Pre-1971, Unimproved, Nonconforming Lots.** An unimproved, nonconforming lot, legally existing as of September 23, 1971, may not be developed unless the Commission grants a variance to those standards that make the lot nonconforming. However, if a lot is at least 20,000 square feet in size, has at least 100 feet of shore frontage, and is not a contiguous lot as described in

Appendix 6,E,5 below, the Commission may allow for development by waiving, to the minimum extent necessary, the requirements that make the lot nonconforming. In this case a variance is not required. This waiver may only be granted if the proposed development would meet the shoreline setback requirements in Appendix 4, D.

4. **Development of Other Nonconforming Lots.** When a lot was lawfully created after September 23, 1971, in conformity with LURC dimensional requirements applicable at the time, the Commission may waive, to the minimum extent necessary the current dimensional requirements. Waived setbacks shall not be reduced below those in effect at the time of creation of the lot.
5. **Contiguous Lots.** Two or more contiguous lots in the same ownership that individually do not meet dimensional requirements shall be combined to the extent necessary to meet the dimensional requirements, except where:
 - a. such lots are part of a subdivision approved by the Commission, or
 - b. each lot has a legally existing dwelling unit that conformed to the Commission's rules at the time each lot was developed.

Under these two circumstances the lots may be conveyed separately or together.

Expansion of Septic Systems. The conversion from primitive to combined septic systems on legally created and developed lots is allowed without a permit provided authorization is obtained from the local plumbing inspector or from the Department of Human Services, Division of Health Engineering and provided there are no limitations on combined septic systems established by prior permit conditions.