

ARTICLE 16 – NON-CONFORMITY PROVISIONS**16.1. NON-CONFORMITY DEFINED**

A legal non-conforming (or 'grandfathered') lot, structure, sign, or use is one that lawfully existed at the time of enactment of this Ordinance, or any subsequent amendment to this Ordinance, and which, as a result of the enactment of this Ordinance, or subsequent amendment, fails to comply with all of the applicable requirements of this Ordinance. Such requirements shall include, but are not limited to, the use restrictions and lot standards for the Growth Management Area, Development Overlay Area, Shoreland Management Area, or Special Protection Area in which it is located.

An illegal non-conforming lot, structure, sign, or use is one that did not exist lawfully at the time of enactment of this Ordinance; or is a lot, structure, sign, or use that is created after the enactment of this Ordinance or any subsequent amendment, and that at the time of its creation fails to comply with all of the then existing and applicable requirements of this Ordinance, or subsequent amendments; including, but not limited to, use restrictions and lot standards.

A non-conforming condition (lot, structure, sign, or use) shall not be permitted to become more non-conforming, except as otherwise specifically provided for in this Ordinance.

16.2. GENERAL PROVISIONS

The following provisions apply to non-conformities generally:

16.2.1. Normal Repair and Maintenance. The normal upkeep and maintenance of non-conforming structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as Federal, State, or local building and safety codes may require are permitted.

16.2.2. Transfer of Ownership. Any legal non-conformity may be transferred and the new owner may, subject strictly to the requirements of this Article, continue such non-conformity, provided, however, that nothing contained herein shall be construed to permit any person or entity to occupy or use any lot or structure or to continue any use in violation of any other Federal, State, or Municipal statute, ordinance, or regulation.

16.2.3. Illegal Non-Conformity. Any illegal non-conformity shall cease or be corrected immediately. Any continuation of an illegal non-conformity is a violation of this Ordinance.

16.2.4. Burden of Proof. The burden of establishing that any non-conformity is a legal non-conformity shall, in all cases, be upon the owner of such non-conformity and not upon the Town of Clifton.

16.2.5. Conversion to Conformity. All non-conformities shall be encouraged to convert to conformity whenever possible and, when required by this Ordinance, shall convert to conformity.

16.2.6. Reversion to Non-conformity Prohibited. Once converted to conformity, no lot, structure, or use shall revert to non-conformity.

16.3. NON-CONFORMING STRUCTURES

The following provisions shall apply to non-conforming structures:

16.3.1. Expansion of Non-Conforming Structures.

A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority identified in the tables of allowed uses, as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure. Such expansion shall be in accordance with **Article 16.3.1**.

16.3.1.1. Setbacks in the Shoreland Management Area. Legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Ordinance are met.

16.3.1.1.1. Prohibition of Expansion Within 25 feet of Shoreline. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.

16.3.1.1.2. Prohibition of Expansion of an Accessory Structure. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement.

16.3.1.1.3. Limits on Square Footage and Height within 75 feet of Shoreline. For structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area for all portions of those structures within that 75-foot distance is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater.

16.3.1.1.4. Limits on Square Footage and Height within 100 feet of Shoreline. For structures located less than 100 feet, horizontal distance, from the normal high-water line of a great pond classified as GPA, the maximum combined total floor area for all portions of those structures within that 100-foot distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 100 feet, horizontal distance, of a great pond is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the floor area and height limits of **Article 16.3.1.1.3**, above.

For the purposes of **Article 16.3.1**, a basement is not counted toward floor area.

16.3.1.2. Restrictions on New, Enlarged or Replacement Foundations. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming 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 or its designee. The decision shall be based on the criteria specified in **Article 16.3.2 Relocation of Non-Conforming Structures**, below. If the completed foundation does not extend beyond the exterior dimensions of the structure 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, it shall not be considered to be an expansion of the structure.

16.3.1.3. Special Expansion Allowance. Existing principal and accessory structures that exceed the floor area or height limits set in **Article 16.3.** above, may not be expanded, except that the limits may be exceeded by not more than 500 square feet provided that all of the following requirements are met.

16.3.1.3.1 Fifty Foot Setback. The principal structure is set back at least 50 feet, horizontal distance, from the normal high-water line of a water body, tributary stream or upland edge of a wetland.

16.3.1.3.2. Fifty Feet of Trees or Vegetation. A well-distributed stand of trees and other natural vegetation as defined in **Article 9, SS 5.2.2**, extends at least 50 feet, horizontal distance, in depth as measured from the shoreline or tributary stream for the entire width of the property.

If a well-distributed stand of trees and other vegetation meeting the requirements of **Article 9, 5.2.2** is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, including a scaled site drawing, by the property owner, and approved by the Planning Board or its designee, to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet, horizontal distance, of the shoreline or tributary stream.

16.3.1.3.3. Presence of Natural Ground Cover. Adjacent to great ponds classified GPA, except for the allowable footpath, there exists complete natural ground cover, consisting of forest duff, shrubs and other woody and herbaceous vegetation within 50 feet, horizontal distance, of the normal high-water line. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch and plantings of native shrubs, and other woody and herbaceous vegetation in quantities sufficient to retard erosion and provide for effective infiltration of storm water.

16.3.1.3.4. An Approved Written Plan and Scale Drawing. A written plan by the property owner, including a scaled site drawing, is approved by the Planning Board and is developed, implemented, and maintained to address the following mitigation measures for the property within the Shoreland Management Area.

(i) **Stabilization of Erosion Areas.** Unstabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies, tributary streams, and wetlands.

(ii) **Storm Water Runoff from Non-Vegetated Surfaces.** Roofs and associated drainage systems, driveways, parking areas, and other non-vegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body, tributary stream or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron, or similar device.

16.3.1.4. Planting Requirements. Any planting or re-vegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan drafted by a qualified professional, be implemented at the time of construction, and be designed to meet the rating scores and the ground cover requirements of **Article 9, SS 5.2.2** when the vegetation matures within the 50 foot strip. At a minimum, the plan must provide for the establishment of a well-distributed planting of saplings spaced so that there is at least one

sapling per 80 square feet of newly established buffer. Planted saplings may be no less than three (3) feet tall for coniferous species and no less than six feet tall for deciduous species. The planting plan must include a mix of at least three native tree species found growing in adjacent areas, with no one species making up more than 50% of the number of saplings planted unless otherwise approved by the Planning Board or its designee, based on adjacent stand comparison. All aspects of the implemented plan must be maintained by the applicant and future owners.

16.3.1.5. Filing and reporting requirements. Written plans required pursuant to **Article 16.3.1.3.4** must be filed with the Penobscot County Registry of Deeds. A copy of all permits issued pursuant to this section must be forwarded by the municipality to the Department within 14 days of the issuance of the permit.

16.3.1.6. Prohibition of Expansion toward the water. No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary or wetland.

16.3.2. Relocation of Non-Conforming Structures. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall 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. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

16.3.2.1. Replanting/Reforestation. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. 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 similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

16.3.2.2. Re-vegetation. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

16.3.3. Reconstruction or Replacement of Non-conforming Structures. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the 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 or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to **Article 16.3.1** above, as determined by the non-conforming floor area of the reconstructed or replaced structure at its new location. If the total amount of floor area of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with **Article 16.3.2** above.

16.3.4. Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall 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 functionally water-dependent uses.

16.4. NON-CONFORMING USES

The following provisions shall apply to non-conforming uses:

16.4.1. Expansion. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in **Article 16.3.1** above.

16.4.2. Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

16.4.3. Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in **Article 16.3.4** above.

16.5. NON-CONFORMING LOTS OF RECORD

16.5.1. Non-conforming Lots of Record. A single, vacant parcel of land, the legal description or dimensions of which are recorded on a document or map on file at the Penobscot County Registry of Deeds at the effective date of this Ordinance or any amendment, and which, as a result of the enactment or respective amendment of this Ordinance, does not meet the requirements of lot area, lot width, road or shore frontage in the Growth Management Area or Shoreland District in which it is located, and which does not adjoin another parcel in common ownership, may be built upon, without the need for a variance, subject to the following:

16.5.1.1. Such development shall, in all other respects, comply with the provisions of this Ordinance.

16.5.1.2. No development shall be commenced until the owner demonstrates to the satisfaction of the Code Enforcement Officer that there is reasonable access to the site for emergency vehicles.

16.5.1.3. Such development shall be limited to a single-family dwelling and accessory structures per lot.

Variations relating to setback or other requirements **not** involving lot area, lot width, road or shore frontage shall be obtained by action of the Board of Appeals.

16.5.2. Contiguous Built Lots. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (**12 MRSA §4807-A through 4807-D**) and the **State of Maine Subsurface Wastewater Disposal Rules** are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

16.5.3. 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 Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance 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 dimensional requirements.

In the Shoreland Management Area, this provision shall not apply to two (2) or more contiguous lots, at least one (1) of which is non-conforming, owned by the same person or persons on August 27, 1991, and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the **State of Maine Subsurface Wastewater Disposal Rules**; and

16.5.3.1. Each lot contains at least one hundred feet (100') of shore frontage and at least twenty thousand (20,000) square feet of lot area; or

16.5.3.2. Any lots that do not meet the frontage and lot size requirements of **Article 16, Section 16.5.3.1** are reconfigured or combined so that each new lot contains at least one hundred feet (100') of shore frontage and twenty thousand (20,000) square feet of lot area.

NON-CONFORMITY PROVISIONS