

**Chapter 107: PERFORMANCE STANDARDS GOVERNING EXPANSIONS OF EXISTING NONCONFORMING USES, INCLUDING STRUCTURES**

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SUMMARY: The expansion of any existing nonconforming structure within the shoreland zone is limited to 30% calculated by both square footage and height, and the structure can go no closer to the water than the existing closest point. The reconstruction or replacement of existing nonconforming structures may be allowable by permit if the reconstruction or replacement meets certain criteria. A nonconforming use may not be changed to another nonconforming use unless it is determined that the new use will not result in an increased adverse impact on the lands and waterways of the corridor.

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**1. Scope**

This regulation shall be effective in all areas of the Saco River corridor as defined in Title 38 M.R.S.A. Section 953 and shall apply to all nonconforming uses or structures in existence prior to March 19, 1974, and to all nonconforming uses or structures established after March 19, 1974, and which legally exist as a result of the granting of a variance by the commission.

**2. Definitions**

The terms “expansion,” “enlargement,” and “extension” shall, for the purposes of these standards, be synonymous and shall mean any increase in the land area covered by an existing nonconforming use or any increase in any dimension of a nonconforming structure, including height.

**3. Criteria for Approving an Expansion to an Existing Nonconforming Structure within the Corridor**

- A. The proposed expansion will be on soils suitable for the proposed use and will not unreasonably involve any of the factors enumerated in 38 M.R.S.A. Section 959-A.1.A.–K. of the *Saco River Corridor Act*.
- B. The proposed expansion will not result in an increase in nonconformity of all applicable performance standards.
- C. If the expansion involves any increase in the number of bedrooms in a single or multi-family residential dwelling, or if it involves an anticipated increase in the amount of wastewater generated by the expanded use, then, prior to issuance of any permit for the expansion, the applicant shall provide documentation that the existing system of sewage disposal is adequate under the provisions of the *Maine Subsurface Wastewater Disposal Rules*, *Maine State Plumbing Code*, and/or other applicable state requirements, or shall, as part of the permit application, submit a proposal for a new system adequate to serve the expanded use. No permit shall be issued by the commission until the applicant has demonstrated that the existing sewage disposal system is adequate or that a system of sewage disposal adequate for the intended use can and will be installed. The commission

may require, when a new system is found to be necessary, that the new system be installed prior to the commencement of the proposed expansion.

- D. A new or enlarged basement built under an existing structure is not considered an “expansion”—if: (a) the structure and new foundation go no closer to the shoreline than the prior foundation and are set back from the shoreline to the greatest practical extent, and (b) the completed foundation does not extend beyond the exterior dimensions of the structure.
- E. After September 1, 1983, in areas of the Saco River corridor which are also within the shoreland zone established by 38 M.R.S.A. Section 435, if any portion of a structure does not meet applicable setback standards, that portion of the structure shall not be expanded in floor area by 30% or more during the lifetime of the structure.
- F. Any buildings or building additions — including decks, porches, stoops, and other portions of a building or building addition — shall not, when taken in total, cover more than 15% of the land area of the lot on which the building or building addition is situated. This standard shall not apply to areas of the corridor designated as a General Development District prior to September 1, 1983.
- G. Any building addition must be an integral part of the primary residential structure. This shall be accomplished by a direct, physical above-ground connection of the addition or accessory structure to the existing structure by load-bearing surfaces, including roofs and common walls.
- H. In the event the proposed structure does not meet the standards contained in 3.A.–G. above, the applicant may seek a variance under the provisions of 38 M.R.S.A. Section 963.

#### **4. Criteria for Approval of Reconstruction or Replacement of an Existing Nonconforming Structure within the Corridor**

- A. Within an area extending 100 feet from the normal or mean high water line of the Saco, Ossipee, or Little Ossipee rivers, an existing nonconforming structure that does not meet the required setback or frontage requirements may be reconstructed or replaced if the proposed project meets the following criteria:
  - (1) The proposed structure is no larger than the area of the footprint of the original structure, except as allowed pursuant to Section 3.E. above. The proposed structure is no greater than 30% taller than the height of the original structure. The height requirement shall not apply to areas of the corridor designated as a General Development District prior to September 1, 1983.
  - (2) The proposed structure does not increase the nonconformity of the existing, original structure.
  - (3) If the proposed structure can be relocated or reconstructed to meet the applicable setback and frontage requirements, then no portion of the reconstructed structure shall be replaced at less than the setback and frontage requirements for a new structure. This requirement shall not apply within General Development Districts established prior to September 1, 1983.

If the existing nonconforming structure is located within a General Development District established prior to September 1, 1983, the structure may be reconstructed or replaced in its existing location. Where there is a conflict between this standard and the DEP Shoreland Zoning Ordinance, the stricter provision shall prevail.

- (4) The proposed structure must meet the setback requirements to the greatest extent practical as determined by the commission or its designee. In determining whether the proposed structure meets the setback to the greatest extent practical, the commission shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of any other structures on the property and on adjacent properties, the current location of the septic system and on-site soils suitable for septic systems, the type and amount of vegetation to be removed to accomplish a relocation, the type and physical condition of the current foundation, and any other applicable standards to address the environmental factors pursuant to Chapter 103. These criteria shall not apply in areas established as a General Development District prior to September 1, 1983.

B. Within an area extending from 100 feet to 250 feet from the normal or mean high water line of the Saco, Ossipee, or Little Ossipee rivers, an existing nonconforming structure that does not meet the required setback or frontage requirements may be reconstructed or replaced if the proposed project meets the following criteria:

- (1) The proposed structure does not increase the nonconformity of the original structure.
- (2) If the structure can be relocated or reconstructed to meet the applicable setback and frontage requirements, no portion of the proposed structure shall be replaced at less than the setback requirement for a new structure.
- (3) The proposed structure must meet the setback requirements to the greatest extent practical as determined by the commission or its designee. In determining whether the proposed structure meets the setback to the greatest extent practical, the commission shall consider the same criteria listed in subsection 4.A.(4) above.
- (4) If the proposed structure meets all criteria above, the existing structure may be reconstructed or replaced and also may be expanded in floor area and height by 30% once during the lifetime of the structure.
- (5) The standards noted above in subsection 4.B.(1-4) and 3.E. shall not apply to areas of the corridor within 100–250 feet from the normal or mean high water line of the rivers designated as a General Development District prior to September 1, 1983.

C. In the event the proposed structure does not meet the standards contained in 4.A. or 4.B., the applicant may seek a variance under the provisions of 38 M.R.S.A. Section 963.

**5. Revegetation Requirements for the Removal, Reconstruction, or Replacement of an Existing Nonconforming Structure in the Corridor**

- A. Trees removed in order to reconstruct or replace an existing nonconforming structure must be replaced. For every tree that is removed, it must be replaced with one native tree over three feet in height. The applicant may submit a revegetation plan to the commission for consideration along with a proposal for development, but replacement trees must be replanted no further from the water than the trees that were removed.

Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be revegetated with a combination of native shrubs, trees, and grasses.

**6. Nonconforming Uses**

- A. An existing nonconforming use may not be changed to another nonconforming use unless it is determined by the commission that the proposed use will have no greater adverse impact on the rivers or lands adjacent to the use than the current existing use.
- B. The applicant will be required to submit a written application for approval of the proposed change of use along with documentation addressing any standards concerning the applicable environmental factors in Chapter 103. This will allow the commission to determine if the proposed change of use will result in a greater adverse impact on the land or waterways in the corridor.
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STATUTORY AUTHORITY: 38 M.R.S. Section 954-C

EFFECTIVE DATE:

January 30, 2006 – filing 2006-44

AMENDED:

July 1, 2019 – filing 2019-107