

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

SUMMARY: The expansion of any existing nonconforming structure within the Shoreland Zone is limited to 30% based on the footprint that existed as of March 19, 1974, and the structure may not be expanded any closer to the normal or mean high water line. The maximum height of the proposed structure will not exceed the height limits shown in Table A in section 5. Non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot within the Shoreland Zone. 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.

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

Footprint: The entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as attached structures such as garages, decks, porches or steps.

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

3. Criteria for Approving an Expansion, Reconstruction or Replacement of an Existing Nonconforming Structure within the Corridor

- A. The proposed structure 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 structure will not result in an increase in nonconformity of all applicable performance standards.
- C. If the structure 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

construction, 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 permit from the Commission is required for the construction of a new or enlarged basement.
- 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 footprint by more than 30% during the lifetime of the structure.
- F. Non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot within the Shoreland Zone. For purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, patios and other areas from which the vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as non-vegetated surfaces. This standard shall not apply to areas of the corridor designated as a General Development District prior to September 1, 1983.
- G. Any building expansion 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. 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 Maine DEP Shoreland Zoning Ordinance, the stricter provision shall prevail.

- I. 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.

- J. In the event the proposed structure does not meet the standards contained in 3.A.–I. above, the applicant may seek a variance under the provisions of 38 M.R.S.A. Section 963.

4. Additional Criteria Specific to Accessory Structures

- A. An accessory structure located within 100 feet of the normal or mean high water line may not be expanded.

An accessory structure located between 100 feet and 250 feet of the normal or mean high water line may not be expanded if it is located closer to the mean or normal high water line than the principal structure.

The footprint area of a legally permitted accessory structure may be included in the calculations of the expansion of another structure on the lot only if the accessory structure is permanently removed.

Saco River Corridor Commission staff reserve the right to grant exceptions for accessory structures that have minimal footprint measurements, included but not limited to fences, flagpoles etc.

5. Additional Conditions Specific to Height Restrictions

- A. Within an area extending 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 expanded, reconstructed or replaced if the proposed project meets the following additional 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 does not exceed the height restrictions identified in Table A, except as allowed pursuant to Section 5.A.4. below. The height requirement shall not apply to areas of the corridor designated as a General Development District prior to September 1, 1983.

Table A

Setback from the Normal or Mean High Water Line	Maximum Height
0 feet to <25 feet setback	15 feet
25 feet to <75 feet setback	20 feet
75 feet to <100 feet setback	25 feet
100 feet to 250 feet setback, and beyond	35 feet
100 feet to 250 feet setback in Resource Protection District	25 feet

- (2) If the proposed structure meets all criteria above, the existing structure may be reconstructed or replaced and also may be expanded in footprint by 30% once during the lifetime of the structure.
- (3) The standards noted above in subsections 5.A.(1-2) , 3.B, 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.
- (4) The height of a structure that is a legally existing nonconforming principal or accessory structure may be raised to, but not above, the minimum elevation necessary to be consistent with the local floodplain management elevation requirement, as long as the structure is relocated, reconstructed or elevated within the boundaries of the parcel so that the water body or wetland setback requirement is met to the greatest practical extent.

This paragraph applies to structures that:

- A. Have been or are proposed to be relocated, reconstructed or elevated to be consistent with the local floodplain management elevation requirement; and
- B. Are located in an area of 100-year floodplain.

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

- A. Any vegetation removed in order to reconstruct or replace an existing nonconforming structure must be replaced with native species of the same size and species to the extent possible. SRCC may require more than a one-for-one replacement planting depending on specific circumstances. Replacement vegetation must be replanted no further from the water than the vegetation that was removed, unless approved by SRCC. The applicant must submit a revegetation plan to the commission along with a proposal for development. The SRCC will make the final determination to accept or deny the revegetation plan.

Where feasible, when a structure is removed or relocated on a parcel, the original location of the structure shall be revegetated with a combination of native vegetation, size and species to be approved by the Commission.

7. 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

January 10, 2023 – filing 2023-003