

## SECTION III. NONCONFORMANCE

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#### A. CONTINUATION OF NON-CONFORMANCE

Any lawful use of buildings, structures, land, or parts thereof existing at the time of adoption or amendment of this Ordinance, and made non-conforming by the provisions of this Ordinance or any amendments thereto, may be continued, subject to the provisions of this Section.

#### B. NON-CONFORMING LOTS OF RECORD

In any district, a single lot of record at the effective date of adoption or amendment of this Ordinance may be built upon even though such lot fails to meet the minimum requirements for lot area or lot width which are applicable in the district, provided such lot is in separate ownership and not of continuous frontage with any other lot or lots in the same ownership. Such lot shall conform to all other requirements, not involving lot area or lot width, for the district in which it is located, unless a variance from such other requirements is obtained from the Board of Appeals pursuant to Section V, B, 3 of this Ordinance.

#### C. NON-CONFORMING BUILDINGS OR STRUCTURES

1. No building or structure which is non-conforming with respect to the Space and Bulk requirements of this Ordinance may be expanded, enlarged or increased in height unless such expanded or enlarged portion complies with the Space and Bulk requirements of this Ordinance or the Board of Appeals grants relief from such requirements by a variance under Section V, B, 3 or Section V, B, 6, or by limited reduction of yard size under Section V, B, 5 of this Ordinance, except:

a) The installation of one or more dormers on a dwelling shall not be considered an expansion, enlargement or increase in height provided that (1) dormer or dormers are set in a minimum of 12 inches from each end of the roof and from the exterior face of the story immediately below the roof, (2) the aggregate length of all dormers, measured along their faces, does not exceed the total length of the ridge of the roof less 24 inches, and (3) the height of the ridge is not increased. (8/06/97) (6/21/00)(03/02/16)

b) The elevation of an existing structure required for the purpose of meeting the minimum elevation standards in the Scarborough Floodplain Management Ordinance or Maine Department of Environmental Protection Chapter 355 – Coastal Sand Dune Rules, shall not be considered an expansion, enlargement or increase in height.(03/02/16)

2. Should any non-conforming building or structure be destroyed or damaged by any means beyond the control of the owner, it shall be rebuilt or restored within a period of one year or thereafter conform with the Space and Bulk requirements of this Ordinance unless the Board of Appeals grants relief from such requirements by variance under Section V, B, 3 or by limited reduction of yard size under Section V, B, 5 of this Ordinance. If a non-conforming building or structure is demolished or removed by or for its owner, it shall not be rebuilt or replaced except in conformity with the Space and Bulk requirements of this Ordinance unless the Board of Appeals grants relief from such requirements by variance under Section V, B, 3 or by limited reduction of yard size under Section V, B, 5 of this Ordinance. (06/21/00)

3. Notwithstanding any space and bulk requirements of this Ordinance, a non-conforming building or structure may be used for any use allowed in the zoning district where it is located.

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4. Any nonconforming building or structure which existed on or before March 1, 1985 may continue to be used and occupied, even though its original construction may have violated the Space and Bulk requirements of the Zoning Ordinance in effect at the time of construction, if it appears from the Town's records that:

- (i) A building permit was issued for the building or structure; and
- (ii) Since March 1, 1985, there has been no expansion or enlargement of the building or structure or alteration of the dimensions of the lot on which the building or structure is located which increased the non-conformity beyond that existing on March 1, 1985.  
(1/05/94)

5. Notwithstanding Section III(C)(1) above, a nonconforming building or structure located in the General Business, B-2, or the Industrial District, I, may be expanded or enlarged by increasing the height of the building, provided the following requirements are met:

- (i) the building was constructed on or before March 1, 1985;
- (ii) the height increase does not exceed 100% of the building height existing prior to any increase in height allowed pursuant to this subsection (5); and
- (iii) the expansion or enlargement occurs entirely within the footprint of the existing building.  
(09/20/00)

#### D. NON-CONFORMING USES OF LAND

1. No non-conforming use of land shall be enlarged or increased nor extended to occupy a greater area of land than that occupied at the effective date of adoption or amendment of this Ordinance.
2. No non-conforming use of land shall be moved in whole or in part to any portion of the lot, which was not occupied by such use at the effective date of adoption of this Ordinance.
3. If any non-conforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.

#### E. NON-CONFORMING USES OF STRUCTURE

1. No existing structure devoted to a non-conforming use shall be enlarged, extended, or expanded except in changing the use of the structure to conforming use.
2. Any non-conforming use may be extended throughout any parts of a building, which were manifestly in existence and arranged or designed for such use at the time of the adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
3. If a non-conforming use of a structure is superseded by a permitted use, the non-conforming use shall not thereafter be resumed.
4. If any non-conforming use of a structure ceases for any reason for a period of more than one year, any subsequent use of such structure shall conform to the regulations specified by this Ordinance for the District in which such structure is located.

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### F. APPEALS FROM RESTRICTIONS ON NON-CONFORMING USES

1. Notwithstanding the provisions of subsection D and E of this Section, a non-conforming use of land, buildings or structures may be enlarged, extended, expanded, resumed, or converted to another non-conforming use on the lot which it occupied at the effective date of adoption or amendment of the Ordinance, upon approval by the Board of Appeals pursuant to the procedures of Section V, C of this Ordinance.

The Board of Appeals may not approve any such enlargement, extension, expansion or resumption or conversion to another non-conforming use, unless it finds that:

- (a) the impact and effects of the enlargement, extension, expansion, resumption or conversion to another non-conforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the non-conforming use before the proposed enlargement, extension, expansion, resumption or conversion to another non-conforming use; and
- (b) the enlarged, extended, expanded, resumed or conversion to another non-conforming use will comply with the standards for Special Exceptions contained in Section IV, I of this Ordinance.