

WARRANT ARTICLE #71: To see if the Town will vote in favor of approving modifications of the Land Use Ordinance Town of Benton Maine, last revised March 2019, with the required modifications labeled “Part 3” designed to 1) incorporate the goals and objectives of the Town of Benton 2018 Comprehensive Plan adopted by the people on March 10, 2018, and 2) to address missing or outdated content in the document.

Part 3 modifications include:

- 1) Modification to Section IV: Non-Conformance

Language additions are reflected with underline text, e.g. TEXT ADDITION

Language removal are reflected with strike-thru text, e.g. ~~TEXT REMOVAL~~

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Modifications – PART 3

Section IV: Non-Conformance (~~Grandfathering~~)

A. Purpose

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance shall be allowed to continue, subject to the requirements set forth in this section.

A.B. Defined

1. Non-Conformance: Is the status or condition of land or structures which exists and is legal prior to the enactment of this Ordinance, but which would not be legal if commenced after the effective date of this Ordinance.
2. Non-Conforming Use: Use of buildings, structures, premises, land or parts thereof which is not permitted in the District in which it is situated or which does not meet the performance standards prescribed for it by this Ordinance, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.
3. Non-Conforming Structure: A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.
4. Non-Conforming Lot of Record: A lot shown on a plan or deed recorded prior to the effective date of this Ordinance or amendment, which does not meet the area, frontage, width or depth requirements of the District in which it is located.

B.C. General Requirements

Except as hereinafter specified, no building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, moved, or altered and no new lot shall be created unless in conformity with all of the regulations herein specified for the district in which it is located. The following provides the requirements for determining conformity:

1. Continuation: Any non-conforming use or non-conforming structure may continue to exist but may not be extended, reconstructed, enlarged, or structurally altered except as specified in this section.
2. Transfer of Ownership: Non-conforming structures, non-conforming lots of records and nonconforming uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this section.
3. Routine Maintenance: This Ordinance allows the normal upkeep and maintenance of nonconforming uses and structures; repair, renovation. Or modernization which does not involve expansion of the non-conforming use or structure and which cost less than 25 percent of the market value of the structure before such work is started; and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.
4. Restoration: Any non-conforming use or structure which is hereafter damaged or destroyed by fire or any cause other than the willful or reckless act of the owner or their agent, may be restored or reconstructed within two (2) years of the date of said damage or destruction, provided that:
 - a. The non-conforming dimensions of any restored or reconstructed structure shall not exceed the non-conforming dimensions of the structure it replaces;

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- b. Any non-conforming structure shall not be enlarged except in conformity with this Ordinance and the Maine State Subsurface Wastewater Disposal Rules: and
 - c. Any non-conforming use shall not be expanded in area. Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed.
5. Expansion of Non-Conforming Commercial or Industrial Uses or Structures:
- a. A non-conforming, existing commercial or industrial use or structure may be expanded if it does not produce an unreasonable adverse impact on surrounding properties.
 - b. An application for expansion shall be considered using the same criteria and procedures as a conditional use permit, **Section V**.

C.D. **Non-Conforming Use**

The use of land, buildings or structure, lawful at the time of adoption of this Ordinance, or of subsequent amendments of this ordinance, may continue although such use does not conform to the provision of this Ordinance, except as provided in the following paragraphs below.

1. Resumption Prohibited: A lot, building, or structure in or on which non-conforming use is discontinued for a period exceeding two (2) years or which is superseded by a conforming use, may not again be devoted to a non-conforming use, even if the owner has not intended to abandon the use.
2. A Structure Non-Conforming As To Use: Except single-family dwellings, a structure, which is devoted to a non-conforming use, shall not be enlarged unless the non-conforming use is terminated.
 - a. Single-family dwellings in the Industrial District may be enlarged as long as the dimensional requirements of the district are met.
 - b. A non-conforming use or part of a building or structure shall not be extended throughout other parts of the building or structure unless those parts of the building or structure were manifestly arranged or designed for such use prior to the adoption of this Ordinance, or of any amendment making such use non-conforming.
 - c. Lack of Required Parking or Loading Space: A building or structure which is non-conforming as to the requirements for off-street parking and/or loading space shall not be enlarged, added to, or altered unless off-street parking and/or loading space is provided to bring it into conformance with these requirements, for both the addition or alteration and for the original building or structure.
3. Change of Use:
A non-conforming use may be changed to another non-conforming use through the Administrative Appeal process.

The Board of Appeals must find that the proposed use is equally or more appropriate to the district than the existing non-conforming use, and the impact on adjacent properties is no more adverse than the impact of the former use.

In determining whether the impact of the proposed non-conforming use is no more adverse, the Board of Appeals shall consider changes in traffic (volume and type), parking, noise, potential of litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change in use. The applicable standards and requirements of this ordinance shall apply to any request for a new non-conforming use.

Expansions of non-conforming uses are limited to no more than a 25% increase in area or volume of the structure and/or land and shall require review by the Board of Appeals. The Board may approve the expansion request when it finds that the proposed expansion will not create a nuisance or negative impact upon adjacent properties that is greater than the existing non-conforming use.

An existing non-conforming use may be changed to another non-conforming use provided that the proposed use is equally or more appropriate to the district than the existing non-conforming use, and the impact on adjacent properties is less adverse than the impact of the former use.

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- ~~a. The Board of Appeals is responsible for approving changes under this section. The case shall be heard as an administrative appeal.~~
- ~~b. The determination of less impact shall require written findings on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by products, fumes, odors, or other nuisances likely to result from such change of use.~~
- ~~c. The performance standards of this Ordinance shall apply to such requests to establish new nonconforming uses.~~

4. **Land Use Activity:** A non-conforming use of land may not be extended into any part of the remainder of a lot of land. A non-conforming use of land, which is accessory to a non-conforming use of a building, shall be discontinued at the same time the non-conforming use of the building is discontinued.

In the case of earth removal operations, the removal of earth may not be extended as a nonconforming use beyond the setback lines of the parcel upon which such operations were in progress, as required by the performance standards established in **Section IX, C.4.**

Contiguous parcels that were under the same ownership prior to the enactment of this Ordinance may be utilized under the same restriction.

The provision of required off-street parking for an existing non-conforming use shall not be considered expansion of the use.

D.E. Non-Conforming Structures

1. **Expansions Limited:** A non-conforming structure shall not be added to or enlarged unless such addition or enlargement conforms to all the regulations of the district in which it is located; the addition does not increase the non-conformity of the structure, or a variance is obtained.

A non-conforming structure may be repaired, maintained, and improved, but shall not be added to or expanded except as follows:

- The expansion does not itself exceed the maximum building height; and
- The expansion or accessory structure does not increase the existing, non-conforming lot coverage;
and
- The expansion or accessory structure does not increase non-conformance of an existing setback.

2. **Special Cases:**

- a. The addition of an open patio with no structures elevated above ground level shall not constitute the expansion of a non-conforming structure.
- b. The addition of steps or the enclosure of an existing deck shall not constitute the expansion of non-conforming structure.
- c. The placing of a foundation below a non-conforming structure shall not constitute the expansion of the structure as long as the first floor space of the structure is not increased or provided the expansion does not extend beyond the existing structure's footprint. The addition of uncovered, outside stairs or handicapped access facilities shall not constitute an expansion of the structure.
- d. Notwithstanding (cd) above, construction or expansion of a foundation under an existing dwelling which expands habitable space shall be considered an expansion subject to the State plumbing statutes and code requiring documentation of wastewater disposal capabilities.
- e. A non-conforming structure damaged or deteriorated beyond practicable repair may be rebuilt provided that construction is completed within 24 months from the date of loss. The structure may not be enlarged in volume or area except in conformity with this Ordinance.

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E.F. Non-Conforming Lots of Record

1. Development:

- a. A vacant non-conforming lot may be built upon provided that such lot is not contiguous with another vacant non-conforming lot in the same ownership, and that all provisions of this Ordinance except lot size and frontage can be met. Variance of setback or other requirements not involving area or frontage shall be obtained only by action of the Board of Appeals.
- b. A non-conforming lot built upon prior to the enactment or subsequent amendment of this Ordinance is subject to the following restrictions:
 - i. The structure(s) may be required, maintained, or improved.
 - ii. The structure(s) may be enlarged in conformity with all dimensional requirements of this Ordinance except lot area or frontage.
 - iii. Enlargement of structure(s) which cannot meet the requirements of this Ordinance shall be permitted only through a variance granted by the Board of Appeals.

2. Transfer:

- a. Contiguous Built Lots: If two or more contiguous and non-conforming lots or parcels have the same ownership of record on the effective date of this Ordinance, and if a principal ~~use or~~ structure exists on each lot, the lots may be conveyed separately or together, provided that lots that are not served by municipal sewer shall conform to the minimum Lot Size Law (12 M.R.S.A. §4807) and the State of Maine providing the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules~~are complied.~~
- b. Multiple Use: If two or more principal 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 State Minimum Lot Size Law and Subsurface Waste Water Disposal Rules are followed. When such lots are divided, each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.~~rights to each structure may be conveyed separately.~~
- c. Contiguous Lots: Vacant or Partially Built: If two or more contiguous and non-conforming lots or parcels have the same ownership of record on the effective date of this Ordinance, and if the lots are vacant or contain only an accessory structure, the lots shall be combined to the extent necessary to meet the dimensional standards, except where rights have vested, or the lots have frontage on parallel streets.

F.G. Vested Rights

Grandfathered rights cannot arise by the mere filing of a notice of intent to build, an application for building permits, or an application for required state permits and approvals. Substantial construction of structures or improvements must have begun prior to the effective date of this Ordinance, or in the case of pending applications, when the review process on an application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of an in compliance with all validly issued permits, both state and local.