

City Council Workshop

Agenda Item #1

May 23, 2016

Non-conforming Building Lots

The City Council has expressed a desire to look at the policy around the construction of homes on non-conforming building lots throughout the community. Since the early 1990's the City has allowed the construction of homes on 5,000 SF grandfathered lots of record. In 2007, the Ordinance was amended to allow for sub-5,000 SF lots to be built on contingent upon approval by the Planning Board. Periodically the City Council hears of complaints around the construction of homes on these non-conforming house lots.

Planning & Development staff have spent a considerable amount of time researching and providing the City Council information on the 102 parcels under 10,000 SF that have been built on since 2007. Of the 102 parcels, 22 parcels were under the 5,000 SF threshold and required either Planning Board or Board of Appeal approval.

Planning & Development staff will present the item and be available for questions on Monday evening.


City Manager

To: James H. Gailey, City Manager
City Council Members

From: Tex Haeuser, Planning Director

Cc: Patricia Doucette, Deputy Planning & Development Director and Code Enforcement Officer
Sally J. Daggett, Esq.

Date: May 18, 2016

Re: **Policies Related to the Treatment of Single-Family Residential Parcels that are Nonconforming with Respect to Lot Size**

Introduction

South Portland has a relatively long history, and since its original settlement there has been a wide variation in both the size of lots created for single-family homes and in the policies regarding how to treat lots smaller than the zoning minimum lot size requirements. This memo will attempt to review some of these changes in zoning policy, look at the current situation, and make a few recommendations for improvements. The general staff recommendation is that we maintain the current policy structure but make several changes.

Previous Nonconforming Lot Size Provisions

South Portland has had varying rules for nonconforming lots. Initially there were no nonconforming lots. Then, when zoning and minimum lot sizes were adopted and nonconforming lots were created, the rule was that abutting nonconforming undersized lots in the same ownership needed to be treated as if they were merged. As an example, if a person owned two vacant lots side by side, and they each were less than the minimum lot size but when added together would meet the minimum lot size standard, the two lots needed to be considered combined and only one home could be constructed. (However, if the lots were part of a Planning Board approved subdivision, they would not be considered merged.)

In the mid-1970's the nonconformance regulations were changed so that unimproved legally recorded lots of record could be built on depending on the lot size and the date the lot was created:

- Lots recorded prior to 1943 in the Residential AA, A, G, and RF zones could be built on (with a single-family home) if they were at least 5,000 sq. ft. in area and had a minimum of 50' of street frontage.
- Lots recorded between 1943 and 1963 in the AA and RF zones had to be at least 7,500 sq. ft. with 75' of frontage; and lots in the A and G zones again could be 5,000 sq. ft. or more and have at least 50' of frontage.

- Lots recorded between 1963 and 1971 in the AA zone had to be at least 10,000 sq. ft. and have a minimum of 100' of frontage; in the A and G zones it was 7,500 sq. ft. with 75' of frontage; and in the RF the requirement was 30,000 sq. ft. with 150' of frontage.
- Lots recorded between 1971 and 1973 in the Residential A district needed to be a minimum of 12,500 sq. ft. in area with 75' of street frontage.

In 1990 the City Council amended the nonconformance provisions to create an exception to the merger clause to allow undersized lots in the four residential zones (AA, A, G, RF) to be used for single family residences if certain conditions were met. These conditions were:

- It had to be for a single-family detached dwelling.
- There was a height limit of 28 feet.
- Building coverage could not exceed 25% of the lot.
- Each building had to comply with the setbacks of the zoning district in which it was located, except that in the G zone the principal building could comply with the A zone side yard setback requirement or be a minimum of 12 feet from any existing principal building on an abutting lot, whichever was greater.
- Each building had to comply with the space and bulk regulations of the zoning district in which the lot was located not otherwise established by the subsection.
- The principal building had to be connected to a public sewer system.
- The lot had to have frontage on a City-accepted street.
- Building plans had to include pre- and post-construction grading contours and a description of stormwater drainage plans approved by the City Engineer and Building Inspector as satisfactory to prevent soil erosion and stormwater runoff onto public and private property.

As time went on after the enactment of these rules it became evident that contradictions in the way the Zoning Ordinance was written, as well as property takings legal concerns, were allowing owners of lots that did not meet the size limits to go to the Board of Appeals to request lot size variances. The Board of Appeals did grant such variances in approximately half of the cases. This undermined the credibility of the Zoning Ordinance, and, as the Board of Appeals did not have any ability to require design standards, the end result was the construction of a number of homes that were incompatible with the surrounding neighborhood. This gave rise to a certain amount of community concern and consequently was brought to the attention of a group working at that time on a number of zoning changes—the Zoning Improvements Committee.

The Zoning Improvements Committee included:

- Councilor Maxine Beecher, Chairwoman
- Michael Eastman
- Ralph Sama
- Michael Vaillancourt
- Barbara Dee
- Rob Schreiber
- William Arnold
- Gerard Jalbert
- Tex Haeuser, Planning Director
- Pat Doucette, Code Enforcement Officer
- Pat Cloutier, Water Resource Protection Director
- Mark Eyerman, Consultant

The recommendations brought forward by the Committee, which the City Council adopted on 10/1/07, included a variety of changes to the Nonconformance article in the Zoning Ordinance. One of these deals with how porches, decks, and similar building parts that encroach into a setback may be improved. Another adds limits for the voluntary tear-down and reconstruction of a nonconforming building. There are a number of other similar changes. But the Committee's work also included provisions revising the merger and de-merger of non-conforming lots. It essentially did away with tying minimum lot sizes to the period in which a lot was created and said that a lot of record with more than 5,000 sq. ft. and 50 feet of street frontage is considered to be a separate, developable lot that can be built on as long it conforms to the setback, coverage, height, and similar space and bulk requirements of the zone and a set of standards. The standards to be met are the same as the previous ones listed above—e.g., 28' building height, 25% lot coverage, etc.—except a more thorough Drainage Plan is spelled out and the treatment of lots in the Shoreland Zone and flood zones is set forth.

The new (2007) provisions also state that the division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which they are located.

In addition, the new rules for unimproved lots of record allow a lot with less than 5,000 SF to be developed with the approval of the Planning Board based upon a mini-site plan process to demonstrate that the building will conform to the neighborhood. In addition to a review of potential stormwater runoff impacts, the Planning Board evaluates applications based on any predominant pattern in the neighborhood relative to: the relationship of the principal building to the street; width of buildings in relation to width of lots; roof style and orientation; building height and number of stories; appearance of the wall of the building facing the street; and

exterior building materials. There also is a requirement 25% of the area of the lot must be landscaped open space.

Experience with the 2007 Provisions

An inventory of the single-family homes built on lots less than the minimum lot size for the zoning district in which the lot is located¹ came up with approximately 120 such homes having been built in South Portland since the current nonconformance provisions went into effect in 2007 (there are 102 properties in the previously distributed binders as we did not include lots 10,000 sq. ft. or larger). Of these, 19 were on lots less than 5,000 sq. ft. in area and succeeded in obtaining Planning Board approval. Three other sub-5,000 sq. ft. lot homes were built but did not go to the Planning Board because they had obtained Board of Appeals variances prior to enactment of the 2007 provisions. A number of other applicants for sub-5,000 sq. ft. lot homes withdrew their requests when staff could not support their projects due to water conditions, lack of street frontage, or other difficulties.

Some general observations about the homes built on nonconforming lots based on compiling the inventory include:

- In looking at the location maps, the size of the lots do not appear to be substantially different than those around them in the neighborhood. This in part is due to the fact that the minimum lot sizes imposed on the existing neighborhoods in the eastern part of the City in the 1960's, and still in place today, are substantially larger than the average existing lot sizes.
- The value of the homes appear to range from fairly modest, mostly on the smaller lots, to a number of relatively expensive properties.

That being said, there have been a number of issues with the 2007 provisions, such as:

- Some residents wonder why the careful scrutiny that gets applied to sub-5,000 sq. ft. lots—as a function of going through Planning Board review, having a Planning Board hearing, and having to meet neighborhood compatibility design standards—isn't also applied to the nonconforming lots 5,000 sq. ft. and larger.
- There have been some drainage problems. Early experience with the sub-5,000 sq. ft. lots showed that extra care was needed in areas without separated storm sewers. Residents' drainage systems are not allowed to connect directly to combined sewer lines, so if something goes wrong, like the foundation tapping into a high water table causing a sump pump to run constantly, it's difficult to accommodate the water all on-site. Staff and the Planning Board have made adjustments as a result. One builder, for example, was required to extend a storm line a fair distance to the home site.

¹ Current minimum lot sizes: AA = 20,000 sq. ft; A = 12,500 sq. ft; and G = 7,500 sq. ft.

- While homes on nonconforming lots of any size are required to meet the setbacks of the pertinent zones, there is no provision, except in the G zone, for maintaining a minimum distance from a home on an abutting lot. In some non-Planning Board review cases this has resulted in the new building being uncomfortably close to an existing home.

Staff Recommendations

In general, allowing infill, small-lot residential development, if done with appropriate limits, is part of South Portland's leadership in promoting smart growth and sustainability. By accommodating home development in the City with existing streets and other infrastructure and impervious surfaces, a certain amount of land in outlying communities is left undeveloped (longer) and people are creating less greenhouse gas emissions by driving shorter trips, having fewer new roads built, and so on. Other reasons, like providing a niche in the housing market, ensuring an influx of younger families, and enhancing the tax base can also be considered. In a recent Portland Press Herald op-ed piece, for example, a Stony Brook University professor makes an economic argument for increasing density in urban areas. He says,

But there is a general realization that local regulations can prevent cities from attaining their full potential. For example, ...with too much regulation, cities fragment, disperse and sprawl into units that are too small to be economically efficient. ...land use obstructionism by NIMBY's...is probably keeping America's flagship cities from realizing their true potential. ... So if the U.S. is going to jump-start an era of infill—a new frontier of urban productivity—government needs to do several things. First, federal and state governments should roll back overly restrictive land-use regulations. ... [Noah Smith, PPH 5/8/16]

Note that the Comprehensive Plan goes so far as to recommend that not only should recorded lots of record be allowed to be developed with single-family homes, but that the minimum lot sizes in the residential neighborhoods should be decreased from the quarter-acre and half-acre minimum lot sizes to lot sizes based on taking an average of the sizes of the lots in the neighborhood. This would turn many lots that currently are nonconforming with respect to lot size into conforming lots, and it would give owners of larger lots—lots that were created larger to begin with--the same ability to split off and sell a lot as their neighbors who are able to do so by demerging smaller unimproved abutting lots.

In conclusion, while generally supporting the existing policies for allowing lots less than the minimum lot size to be improved with single-family homes, the Planning, Code, and Legal staff members do recommend several changes:

1. Extend the requirements for Planning Board review to all single-family homes on lots less than 10,000 sq. ft. in the A and AA zoning districts and to those on lots less than 7,500 sq. ft. in the G district. This will bring greater scrutiny to bear on stormwater runoff, compatibility with the surrounding neighborhood, and similar matters. It also will

ensure that residents in the neighborhood get a chance to come to a public hearing to air their views and help educate the Board about the neighborhood.

2. Prohibit homes being proposed for nonconforming lots in combined sewer areas from having basements. As described above, the safety valve of tying into the City's stormwater system doesn't exist in combined sewer areas, so preventing homes in these areas from needing sump pumps that potentially could tap into the water table can be accomplished by having the homes be built on slabs without basements. Alternatively, allow basements but require soil investigations of sufficient thoroughness as to provide overwhelming evidence that the foundation will remain above the water table.
3. Add the 12' minimum distance between new and existing principal buildings that currently applies in the G zone to the A and AA zones as well.
4. In cases where the owner of an existing house creates an abutting house lot by adjusting lot lines so that the lots are less nonconforming than before, require that the existing house lot property, if less than the minimum lot size, be included in the Planning Board review and that it meet all the setbacks of the zoning district.
5. Relative to the standard carried over from 1990 that requires homes built on recorded lots less than the minimum lot size to meet the space and bulk requirements of the zone in which the property is located, confirm that residential density is exempt from these requirements.

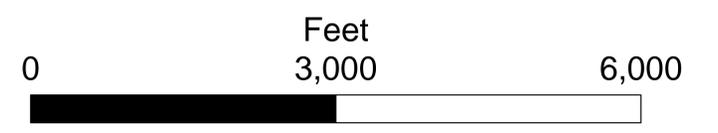
Thank you for your consideration of these proposals.

Nonconforming Lots on which Single-Family Homes Were Built: 2007 - Date



Legend

-  Lots < 5,000 sq. ft.
-  Lots 5,000 to 9,999 sq. ft.



ARTICLE III. Nonconformance

Sec. 27-301. Nonconformance Generally.

- (a) Any lawful use of a building, structure, premises, land, or parts thereof legally existing as April 6, 1975, and made nonconforming by the provisions of this Chapter or any amendments thereto, may be continued subject to the provisions of this Article.
- (b) A nonconforming building, structure, premises, use or land may be transferred to a new owner and the new owner may continue the nonconforming activity subject to the provisions of this Article.

Sec. 27-302. Nonconforming Uses.

- (a) *Continuation.*

A nonconforming use may be continued and the building or structure housing the use maintained and improved until:

- (1) the nonconforming use is terminated in accordance with (b),
- (2) the nonconforming use is converted to a conforming use, or
- (3) the nonconforming use is changed to another nonconforming use in accordance with (d).

- (b) *Termination.*

A nonconforming use is terminated if the use ceases or is abandoned for any reason for a period of two (2) years or more. If a nonconforming use is terminated, any future or subsequent use of the building and/or premises must be in accordance with the provisions of this Chapter. It is the responsibility of the owner of such premises to notify the Code Enforcement Officer of the date of abandonment or cessation of the nonconforming use of premises within one month from the date of such abandonment or cessation. If the owner fails to provide the notice required by this paragraph, the Code Enforcement Officer shall make a determination of the date of termination or abandonment. In

determining the date, the Code Enforcement Officer should consider permits, licenses, and other public records relative to the pre-existing use. The replacement or reconstruction of a nonconforming building is addressed in Sec. 27-303(g).

(c) *Conversion to a Conforming Use.*

A nonconforming use that is converted to a conforming use for the district in which it is located loses its nonconforming status permanently upon the issuance of a Certificate of Occupancy for the conforming use and may not be subsequently re-converted to or used for a nonconforming use.

(d) *Change to Another Nonconforming Use.*

A nonconforming use may be changed to another nonconforming use of the same or a more restrictive classification with the approval of a miscellaneous appeal by the Board of Appeals. The Board of Appeals shall approve the miscellaneous appeal only if it finds, based upon the evidence provided with the appeal, that the new use will be equal to or in greater conformity with the purposes of the zoning district in which it is located, and will have a similar or reduced adverse impact on properties in the same zoning district within five hundred (500) feet of the property as the existing nonconforming use. In reaching this determination the Board of Appeals must consider the volumes and types of traffic generated by the existing and proposed use, the existing and proposed exterior lighting and signage, the levels of noise, dust, odors, and similar factors, the hours of operation, the potential for adverse impacts on abutting properties, and any other relevant factors.

If the proposed change of use is located within the Shoreland Area Overlay District, the Board of Appeals must also find that the proposed use will have no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, than the former use. To aid the Board in determining that no greater adverse impact will occur, the applicant must provide written documentation regarding the probable effects of the proposed use 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, archeological and historic resources, and commercial fishing and maritime activities and other functionally water-dependent uses in accordance with state shoreland zoning requirements.

The burden of proof is on the applicant to demonstrate compliance with the standards of this subsection.

(e) *Spatial Enlargement.*

A nonconforming use may not be enlarged or expanded except as provided for in this section. Enlargement includes the occupancy of more floor area within a building or structure, expansion of the floor area of the building, or the use of a larger area of the site. In the shoreland area, expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures. Outside of the shoreland area, a nonconforming use may be enlarged if one of the following conditions is met:

- (1) the enlargement is needed to comply with federal, state, or local building or fire safety codes, or the Americans with Disabilities Act (ADA) and the improvement will not increase the floor area occupied by the nonconforming use by more than the lesser of 10% of the currently occupied floor area or one thousand (1,000) square feet over the lifetime of the building, is the minimum necessary to meet the code requirements, and conforms to the space and bulk regulations for the zoning district in which it is located.
- (2) the enlargement is to a nonconforming single-family home and will conform to all of the space and bulk regulations for the zoning district in which it is located.

Sec. 27-303. Nonconforming Buildings and Structures.

- (a) *Nonconformance with Respect to Setbacks from Property Lines*
- (1) Increase in Nonconformity - No portion of an existing building or structure that is located within or encroaches into a required setback may be modified in a way that results in any portion of the building being closer to the property line than the existing building except for improvements to provide a wheelchair ramp or other access improvements for people with disabilities (see Sec. 27-152).
 - (2) Porches, Stairways, and Other Unenclosed Building Elements - Any unenclosed element of a principal building or structure such as a porch, stoop, or stairway that is wholly or partially located within a required setback may be improved and modified including the installation of a roof but may not be enlarged or fully enclosed to create living space. An unenclosed or partially enclosed stoop or porch may be modified provided that at least forty (40) percent of the wall area of the stoop or porch (not including the wall with the principal building) is open to the outside and not able to be closed by windows or other surfaces.
 - (3) Horizontal Enlargements within the Required Setback - A building or structure that is nonconforming with respect to a setback requirement may be modified or enlarged provided that the improvement is not located within required setbacks. In addition, a horizontal enlargement of a residential building may encroach on the required setback where the existing nonconformity exists if all of the following are met:
 - (a) The closest point on the new construction will be no closer to the property line than the closest point on the existing building and be at least six (6) feet from the property line. If the existing nonconforming portion of a building is located within six (6) feet of the property line, no encroachment on the required setback by new construction is permitted,
 - (b) The horizontal dimension of the new construction that encroaches on the required setback is less than fifty (50%) of the length of the portion of

the existing building that encroaches on the required setback, and

- (c) The vertical dimension or height of the new construction that encroaches on the required setback is the same or less than the existing nonconforming portion of the building and the exterior wall and roof will be treated similarly to the existing building.

- (4) Vertical Enlargements within the Required Setback - A building or structure that is nonconforming with respect to a setback requirement may be modified or enlarged vertically provided that no portion of the improvement is located within required setbacks. In addition, a vertical enlargement of a residential building may encroach on the required setback where the existing non-conformity exists under the following conditions:

- (a) Dormers may be added to single-family, detached dwellings within a nonconforming yard setback upon a showing by the applicant that the proposed dormer will not substantially reduce or impair the use or view of any abutting property. Applications for this purpose shall proceed as follows:

1. The applicant shall apply to the Code Enforcement Officer, who shall process the application. The Code Enforcement Officer shall send notices of the request to all abutting property owners.

2. The notice shall indicate the nature and purpose of the application and shall state that, unless an abutting property owner contests the application in writing to the Code Enforcement Officer within twenty (20) days of the date of notice, the Code Enforcement Officer will approve the application administratively.

3. If an abutting property owner does contest the application in writing within the twenty (20) days, the application shall be decided by the Board of Appeals as a dimensional variance appeal. All objections must be in writing and state the basis for the objection.

4. Any and all notice and hearing fees shall be borne by the applicant.

(b) *Nonconformance with Respect to Setbacks from Water Bodies or Wetlands*

- (1) A building or structure that is nonconforming with respect to the required setback from water bodies, tributary streams, or wetlands including the water setback requirements of the Shoreland Area Overlay District, Shoreland Resource Protection Overlay District, and Stream Protection Overlay Districts may be modified or enlarged provided that no portion of the improvement under this scenario is located within the required water setback. In addition, the portion of the building located within the required setback may be expanded by not more than thirty (30) percent of the floor area or volume, as those terms are defined in Sec. 27-1305 herein, of the portion of the building located within the setback existing as of January 1, 1989 during the lifetime of the building.
- (2) Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming 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 Board of Appeals, basing its decision on the criteria specified in subsection (3) below. If the completed foundation does not extend beyond the exterior dimensions of the building except for expansion in conformity with subsection (1) above, and the foundation does not cause the building to be elevated by more than three (3) additional feet as measured on the uphill side of the structure (from the original ground level to the bottom of the first floor sill), it shall not be construed to be an expansion of the structure.
- (3) In determining whether the construction or enlargement of a foundation beneath the existing building meets the setback to the greatest practical extent, the Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings 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.

(c) *Nonconformance with Respect to Building Height*

A building that was nonconforming as to height on December 9, 1990, may be enlarged or expanded to the height of the building as of December 9, 1990, or, subject to subsection (g), be rebuilt or reconstructed to the height of the building on that date.

(d) *Nonconformance with Respect to Off-Street Parking and Loading*

A building or structure that is nonconforming with respect to the requirements for off-street parking or off-street loading bays may not be enlarged or altered to create additional dwelling units, or seats as in the case of places of assembly, or floor area as in the case of commercial, industrial, business, institutional or recreational buildings, or accommodations as in the case of hotels, motels and tourist houses, unless off-street parking or loading is provided for such addition, enlargement, or alteration in accordance with Sec. 27-1556. Any existing deficiency does not need to be corrected.

(e) *Nonconformance with Respect to Residential Density Requirements*

A residential building that is nonconforming with respect to the minimum lot area per family or minimum lot area per dwelling unit requirement or other residential density limitation may be improved and/or enlarged provided that the modification does not increase the number of dwellings units in the building or otherwise make the property more nonconforming with the density requirement. The extension or enlargement must conform to all setback requirements. Any extension or enlargement, when added to any other enlargement or extension undertaken after the adoption of this provision, may not exceed four hundred (400) square feet of floor area per building.

(f) *Nonconformance with Respect to Building Coverage or Impervious Surface Limits*

A building or structure that is located on a parcel that is nonconforming with respect to the maximum building coverage

requirement may be modified and the floor area of the building or structure increased as long as the modifications do not increase the amount of building coverage. A modification to the parcel may include removing or reducing the amount of coverage of existing buildings.

A building or structure that is located on a parcel that is nonconforming with respect to a maximum impervious surface limit may be modified and the floor area of the building or structure increased as long as the modifications do not increase the total amount of impervious surface on the parcel. A modification to the parcel may include reducing the area of existing impervious surface to meet this requirement or replacing impervious surfaces with pervious materials.

The Board of Appeals may permit a modification that results in the creation of additional building coverage or impervious surface as a miscellaneous appeal if the Board finds that, in addition to the generally applicable standards, the site will be designed so that the rate and total volume of stormwater runoff after modification will not exceed the pre-modification conditions.

(g) *Reconstruction, Restoration or Damage of a Nonconforming Building or Structure*

The reconstruction or restoration of any nonconforming building or structure which is destroyed or damaged by fire or other accidental cause is permitted, provided that the reconstruction or restored building or structure is not more nonconforming than the damaged or destroyed building or structure, covers no greater land area and has no greater floor area than the pre-existing building, and is substantially completed within two (2) years of the date of the damage/destruction of the property. The Zoning Board of Appeals may extend the deadline for reconstruction/restoration by up to two (2) years for good cause, such as evidence of delayed insurance processing despite demonstrated timely claims submission.

Any nonconforming structure within the shoreland area 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 Board of Appeals in accordance with the purposes of this ordinance. 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 Sec. 27-303(b) above, as determined by the nonconforming floor area and volume, as those terms are defined in Sec. 27-1305 herein, of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume 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 Sec. 27-303(i) below. In no case may the reconstructed or restored building or structure be located any closer to the normal high-water line of the water body or tributary stream or upland edge of the wetland than was the building or structure that was destroyed or damaged. The reconstructed, replaced or restored building or structure shall not be any greater in height than was the building or structure that was destroyed or damaged.

(h) *Replacement of a Nonconforming Residential Building or Structure*

If a nonconforming building is voluntarily removed and replaced, the replacement building shall conform to the following:

- (1) In the Residential A and Residential AA Districts, no portion of the replacement building shall be located within the required side yard even if the pre-existing nonconforming building encroached on the required side yard.
- (2) Except for side yards in the A and AA Districts addressed in (1), no portion of the replacement building shall encroach on any required setback more

than the pre-existing building nor increase any other non-conformity. The floor area and total volume of the portion of the replacement building located within each required setback may not be greater than the floor area and total volume of the portion of the pre-existing building located within the same required setback.

- (3) The height of the portion of the replacement building located within any required setback shall not be greater than the height of the pre-existing nonconforming building within that yard unless permitted by the Zoning Board of Appeals as a variance appeal based upon a finding that the additional height will not substantially reduce or impair the use of any abutting property.

If the replacement building is located within the Shoreland Overlay District, the replacement shall be treated as a relocation and shall be subject to the requirements of (i).

- (i) *Relocation of a Nonconforming Building or Structure within Shoreland Areas*

A nonconforming building located within the Shoreland Area Overlay District, Shoreland Resource Protection Overlay District, or Stream Protection Overlay Districts may be relocated within the boundaries of the parcel on which the building is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Board of Appeals, and if the building is not served by a public sewer system, provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Water Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a building be relocated in a manner that causes the building to be more nonconforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings 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 required water setback in order to relocate the structure, native vegetation must be replanted to compensate for the destroyed or removed vegetation. Replanting is required as follows:

- (1) Trees removed in order to relocate the building or structure must be replanted with at least one (1) native tree, at least five (5) feet in height, for every tree removed. If more than five (5) trees are planted, no species shall make up more than fifty percent (50%) of the number of trees planted. Replaced trees must be planted no further from the water body or wetland than the trees that were removed.
- (2) Other woody and herbaceous vegetation and ground cover that is removed or destroyed must be re-established. An area at least the same size as the area where the vegetation and/or ground cover was disturbed, damaged, or removed must be re-established within the required setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover to what was disturbed, damaged, or removed.
- (3) Where feasible, the original location of the relocated structure must be replanted with vegetation consisting of grasses, shrubs, trees, or a combination thereof.

Sec. 27-304. Nonconforming Residential Lots.

The following provisions govern the treatment of nonconforming residential lots of record that are described in a deed or subdivision plan recorded in the Cumberland County Registry of Deeds prior to October 21, 2007. These provisions allow for nonconforming lots to be treated as separate lots under certain conditions and to be sold or developed. The provisions allow the development of unimproved nonconforming lots in accordance with the provisions of (f) and (g).

- (a) *Separate unimproved nonconforming lots of record.*

An unimproved nonconforming lot of record that is in separate ownership, or is not in common ownership with any abutting lot that has street frontage on the same street, may be developed in accordance with the provisions of (f) without a variance from the Board of Appeals. If the lot has less than five thousand (5,000) square feet of lot area or less than fifty (50) feet of street frontage on a City

accepted street, development of the lot must also conform to (g).

Development of the lot must conform to the space and bulk regulations for the zoning district in which it is located except for the minimum lot area and minimum street frontage requirements unless otherwise specifically provided for in (f) or (g) or a variance is granted by the Board of Appeals.

(b) *Separate developed nonconforming lots of record*

A nonconforming lot of record that is in separate ownership or is not in common ownership with any abutting lot that has street frontage on the same street and that is developed with a principal building may be further developed or redeveloped in accordance with the space and bulk regulations of the zoning district in which it is located except for the minimum lot area and minimum street frontage requirements.

(c) *Contiguous developed lots of record.*

Two or more contiguous lots of record in common ownership each of which is improved with a principal building shall be considered to be separate lots and may be sold as separate lots even if one or more of the lots is nonconforming. The division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which it is located. The division of such lots does not require a variance from the Board of Appeals.

(d) *Abutting unimproved lots of record.*

Two or more unimproved abutting lots of record in common ownership each of which has frontage on a City accepted street and is not improved with a principal building may be built on and/or sold as separate lots without a variance from the Board of Appeals, even if one or more of the lots is nonconforming, subject to the provisions of (f) and (g). The division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots

less nonconforming with respect to the space and bulk regulations for the zoning district in which it is located.

Each lot may be developed in accordance with the provisions of (f). If a lot has less than five thousand (5,000) square feet of lot area or less than fifty (50) feet of street frontage on a City accepted street, development of the lot must also conform to (g). Development of the lot must conform to the space and bulk regulations for the zoning district in which it is located except for the minimum lot area and minimum street frontage requirements unless otherwise specifically provided for in (f) or (g). The Board of Appeals may not grant variances from the space and bulk requirements.

- (e) *Unimproved lot(s) of record abutting a developed lot.*

An unimproved nonconforming lot of record that abuts and is in common ownership with a developed lot of record and that has frontage on a City accepted street may be developed and/or sold as a separate lot without a variance from the Board of Appeals subject to the provisions of (f) and (g). The division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which they are located.

Each unimproved lot may be developed in accordance with the provisions of (f). If a lot has less than five thousand (5,000) square feet of lot area or less than fifty (50) feet of street frontage on a City accepted street, development of the lot must also conform to (g). Development of the lot must conform to the space and bulk regulations for the zoning district in which it is located except for the minimum lot area and minimum street frontage unless otherwise specifically provided for in (f) or (g). The Board of Appeals may not grant variances from the space and bulk requirements.

- (f) *Standards for the development of all nonconforming lots of record.*

The development of any unimproved nonconforming lot of record including lots with less than five thousand (5,000)

square feet of area must comply with the following unless otherwise specifically provided for in this section:

- (1) The principal building must be a single-family detached dwelling used solely for residential purposes including home occupations;
- (2) Each building on the lot shall not exceed twenty-eight (28) feet in height, the height to be measured, notwithstanding the definition of building height in Sec. 27-201, from the peak or highest point on the roof line;
- (3) Total building coverage shall not exceed twenty-five (25) per cent of the lot;
- (4) Each building on the lot shall comply with the side setback requirements of the district in which the lot is located, except that in the Residential G District the principal building shall comply with the side yard setback requirements of the Residential A District or shall be a minimum of twelve (12) feet from any existing principal building on an abutting lot, whichever produces the greater side yard setback on the lot;
- (5) The principal building shall be connected to the public sewer system either directly or via a private sewer which is connected to the public sewer system; and
- (6) Building site plans submitted pursuant to Sec. 5-58 of the Code shall include a Drainage Plan meeting the requirements of Sec. 27-1536(e), Standards for a Drainage Plan.
- (7) If the nonconforming lot of record is located within the Shoreland Area Overlay District, including the Shoreland Resource Protection Overlay Subdistrict and the Stream Protection Overlay Subdistricts, the lot must be developed, and all buildings and structures located, in full compliance with the water setback requirements and performance standards of those districts.
- (8) If the nonconforming lot of record is located within a special flood hazard zone, the lot must be developed, and all buildings and structures located, in full

compliance with the requirements of Article IV of Chapter 5 of the Code of Ordinances.

- (g) *Additional requirements for the development of lots of record with less than 5,000 square feet of lot area or less than fifty (50) feet of street frontage.*

If an unimproved, nonconforming lot of record has a lot area of less than five thousand (5,000) square feet or less than fifty (50) feet of street frontage, development of the lot must conform to the following in addition to the requirements of (f):

(1) Planning Board Approval Required - Development of a lot of record with less than 5,000 square feet of lot area or fifty (50) feet of street frontage may occur only after the proposed development plans are approved by the Planning Board.

(2) Approval Standards - The Planning Board shall approve the development of a lot of record with less than 5,000 square feet of lot area or fifty (50) feet of street frontage only if it finds that the proposed design and development of the lot and the buildings and structures on the lot are consistent with the established character of the neighborhood. In determining if the proposed development meets this criterion, the Planning Board must find that the following are met if they are applicable to the location:

(i) If there is a predominate pattern of development in the immediate neighborhood with respect to the relationship of the principal building to the street, the principal building must be located on the lot so that it has a similar relationship to the street as other neighboring principal buildings on the same side of the street. If this requires the building to be closer to the front lot line than the required front yard setback, the building may encroach on the required yard and no variance is required.

(ii) If there is a predominate pattern in the width of buildings in relationship to the width of lots in the immediate neighborhood, the width of the front of the building must be similar to the relationship of neighboring lots on the same side of the street.

(iii) If there is a predominate pattern in the style of the roof and its orientation with respect to the street in the immediate neighborhood, the roof of the building must be similar to the relationship of buildings on neighboring lots on the same side of the street. If the predominant pattern is for the ridgeline of the roof to be perpendicular to the front property line, the portion of the proposed building facing the street must maintain this relationship.

(iv) If there is a predominate pattern in the height of buildings in the immediate neighborhood, the height of the building based upon existing grade must be consistent with the height of the buildings on neighboring lots on the same side of the street. If the predominant pattern is for buildings to have more than one story, the proposed building must have more than one story for the portion of the building facing the street.

(v) The appearance of the wall of the building facing the street must be consistent with buildings on neighboring lots on the same side of the street. If there is a predominant pattern in the immediate neighborhood for these walls to be treated as the front of the building with a front door and windows, the front wall of the proposed building must be treated as the front of the building. If there is a predominant pattern for neighboring buildings to have a front porch, the design of the proposed building must be consistent with this pattern.

(vi) The exterior materials must be visually compatible with adjacent and nearby buildings where a predominate pattern in the exterior materials exists, except where unacceptable materials predominate. This provision shall not be used to exclude materials that are visually similar to existing materials but are made differently. The determination shall be based upon Sec. 27-1568.H. Materials and Colors.

(vii) At least twenty-five percent (25%) of the area of the lot must be landscaped open space.

(3) Application - The owner of the lot of record or the owner's agent, or other person with right, title, or interest in the property including a valid purchase and sale agreement must make a written application to the

Planning Board requesting approval to develop on a lot with less than 5,000 square feet of lot area or less than fifty (50) feet of street frontage. The application must be made on forms provided by the City. The application must be accompanied by the following documentation:

(i) An existing conditions plan prepared by a land surveyor or other qualified professional licensed in the State of Maine and drawn to scale showing the boundaries of the lot of record, any improvements on the lot including buildings, structures, or paving, the location of buildings and other improvements on the abutting lots, the topography and direction of drainage of the parcel, any existing easements, and the location of all utilities on the lot or in adjacent streets.

(ii) A site plan prepared by a land surveyor or other qualified professional licensed in the State of Maine at the same scale as the existing conditions plan showing the proposed improvements to the lot including buildings, structures, paving, landscaping, easements, and utilities.

(iii) Building plans for the principal building and any accessory buildings including, at a minimum, the first floor plan, and elevations for all sides of the building showing the architectural treatment of the property.

(iv) Perspective drawings or photo simulations showing how the proposed building will appear when seen from the street and how it will fit into the streetscape.

(v) A written and visual analysis of the existing character of the immediate neighborhood within five hundred (500) feet of the parcel that is within the same zone focusing on the factors identified in (2). This should include aerial photos and pictures of the existing lots in the neighborhood.

(vi) A written and visual analysis demonstrating how the proposed development of the lot meets the standards of (2).

(vii) A Drainage Plan meeting the requirements of Sec. 27-1536(e), Standards for a Drainage Plan.

(4) Review Process - The review of an application for the development of a lot with less than 5,000 square feet of lot area or fifty (50) feet of street frontage shall occur as follows:

(i) Prior to submitting an application, the applicant must have a pre-application conference with the Planning and Development Department. No application shall be considered by the Planning Board unless a conference has been held. This meeting is intended to provide the applicant with an understanding of the City's standards and procedures and to allow the applicant to familiarize the staff with the proposed development.

(ii) Upon submission and acceptance of an application, the Planning Staff shall place the item on the Planning Board's agenda for consideration.

(iii) The Planning Director or the Planning Board may request a peer review of the design of the development from an architect or other design professional. This shall occur in accordance with Sec. 27-138.

(iv) The Planning Board must hold a public hearing on the application. The hearing shall be noticed and conducted in accordance with Sec. 27-1425.

(v) In acting on the application, the Planning Board may impose conditions of approval on the development. These conditions must relate to the standards of (2). In all cases the Planning Board shall include a condition requiring that the Certificate of Approval and the Findings of Fact for the development are recorded at the Cumberland County Registry of Deeds.

(vi) The development of the property must comply with the approved application including any conditions of approval. If it is necessary to make modifications to the approved plan prior to or during development, the Planning Director may approve such modifications provided they do not amount to a waiver or substantial alteration of the approved plan including any conditions or requirements set by the Planning Board. Any subsequent modifications to the building or site layout or use may occur only with the approval of an amended application by the Planning Board.

- (5) Performance Guarantee - The applicant shall comply with the performance guarantee requirements of Secs. 27-1429, 27-1430 and 27-1431, as appropriate.

Secs. 27-305 - 27-400. Reserved.