

New London Planning Board

**Discussion of draft Zoning Amendment Language
Regarding Nonconforming Provisions**

For Discussion on Tuesday, Oct 20, 2015

Description of proposed changes: Refer also to the Oct 6th meeting discussion.

Article II, General Provisions, #5 Height Regulations, delete refer to the Shoreland Overlay District and refer to Article XX, Nonconforming provision. (New discussion on Oct 20th)

Article III, Definitions- see definitions 77, 78,79, 102 and 103 (New for discussion on Oct 20th)

Article XIII, Wetland Conservation Overlay District, D. Permitted Uses, (8) –delete part of (8) (New for discussion on Oct 20th)

Article XV Floodplain Overlay District - I. Substantial Improvement of a Nonconforming Structure- delete (New for discussion on Oct 20th)

Article XVI, Shoreland Overlay District:

- ✓ Delete J 1. and J 2 and move to Article XX
- ✓ Delete J 3.
- ✓ K. Building Height, delete and move to Article XX

Article XX:

- ✓ Delete B 1 and replace with the provisions from Article XVI., J 1 and J2
- ✓ Delete C1
- ✓ Keep C2 and renumber, and remove the word “All Other...
- ✓ Delete C3

Article XXII, Streams Conservation Overlay District- delete part of (8). (New discussion on Oct 20th)

NOTE: Refer to key word search of the Zoning Ordinance pertaining to “Nonconforming”. The word “nonconforming” is used 81 times in the Zoning Ordinance.

**Article II, General Provisions
5 Height, page 5**

5. Height Regulation: In all districts, Structures shall not exceed 35 feet in Height above Grade unless a Variance is approved by the Board of Adjustment except as noted to follow. Chimneys in or attached to Dwelling Units may exceed 35 feet in Height as necessary only to comply with state and federal fire codes requirements. The Board of Adjustment may grant a Special Exception for flagpoles, water Towers, chimneys, public utility Structures, and church steeples or radio Towers owned and operated by a federally-licensed amateur radio station operator in all districts. In the Agricultural and Rural Residential District and the Conservation District, the Board of Adjustment may grant a Special Exception for a silo or a windmill. In all districts, a radio Tower owned and operated by a federally-licensed amateur radio station operator up to and including 70 feet in Height is a permitted Use. In all districts, the Board of Adjustment may grant a Special Exception to allow a radio Tower owned and operated by a federally-licensed amateur radio station operator in excess of 70 feet in Height. ~~For Nonconforming Structures located within the first 50 feet from the Normal High Water level in the Shore Land Overlay District, the Height shall not exceed 25 feet in Height above Grade except as provided in Article XVI Shore Land Overlay District, Paragraph K, Building Height. For Nonconforming Structures located within the first 50 feet from the Normal High Water level in the Shore Land Overlay District, the Height shall not exceed 25 feet in Height above Grade except as provided in Article XX, and insert subsection.~~

**ARTICLE III
DEFINITIONS (PAGES 26-29)**

77. Legal Nonconforming Building or Structure: A Legal Nonconforming Building or Structure is a Building or Structure which, in whole or in part, does not conform to the regulations of the district in which the Building or Structure is located, but existed as a Legal Building or Structure prior to the adoption of the regulation(s) that now make the Building or Structure Nonconforming.

78. Legal Nonconforming Lot: A Legal Nonconforming Lot is a Lot which, in whole or in part, does not conform to the regulations of the district in which the lot is located, but existed as a legal Lot prior to the adoption of the regulation(s) that now make the Lot Nonconforming.

79. Legal Nonconforming Use: A Legal Nonconforming Use is a Use of any Building, Structure, or land, which does not conform to the Use regulations of the Zone District in which such Use exists, but existed as a legal Use prior to the adoption of the regulation(s) that now make the Use Nonconforming.

102. Nonconforming Building or Structure: A Nonconforming Building or Structure is a Building or Structure which, in whole or in part, does not conform to the regulations of the district in which the Building or Structure is located.

103. Nonconforming Use: A Nonconforming Use is a Use of any Building, Structure, or land, which does not conform to the Use regulations of the Zone District in which such Use exists.

**ARTICLE XIII
WETLANDS CONSERVATION OVERLAY DISTRICT (PAGES 49-55)**

D. Permitted Uses: Permitted Uses are those which will not require the erection or construction of any Structures or Buildings; will not alter the natural surface configuration by addition of fill or by dredging; and Uses that are otherwise permitted by the Zoning Ordinance. Such Uses include the following:

- (8) Alteration, expansion or improvement of existing Nonconforming Structures and Buildings, consistent with the provisions of Article XX of this Ordinance, and with cutting, clearing and erosion control plans approved by the Planning Board.

**ARTICLE XV
FLOODPLAIN OVERLAY DISTRICT (PAGES 58-62)**

~~I. Substantial Improvement of a Nonconforming Structure located within the 50 Foot Buffer in the Shore Land Overlay District: Substantial Improvement of a Nonconforming Structure located within the 50 foot buffer in the Shore Land Overlay District is governed by the specifications in Article XVI Shore Land Overlay District, paragraph H., sub paragraph 1.~~

**ARTICLE XVI
SHORE LAND OVERLAY DISTRICT (PAGES 63-70)**

~~J. Nonconforming Buildings & Structures: Any Nonconforming Building or Structure located entirely or partly within the Waterfront Buffer of all lakes and ponds over 10 acres in size may be continued indefinitely, Altered and/or expanded provided it complies with the following applicable provisions:~~

1. ~~If the Nonconforming Building or Structure is located entirely within the Waterfront Buffer, then alteration or repair of the Building or Structure is governed by the following:~~
 - a. ~~Alteration or repair of the Building or Structure is only permitted within the existing footprint and outside dimensions, consistent with the provisions of Article XX, Section B, 3, provided the result is a functionally equivalent use. No footprint change or vertical expansion of the existing structure shall be allowed. Any expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system shall require approval by the NH Department of Environmental Services.~~
 - b. ~~Existing decks and porches located entirely within the Waterfront Buffer may not be covered, enclosed or expanded upward or outward beyond the footprint of the existing deck or porch.~~
 - c. ~~Any Substantial Improvement of an existing Nonconforming Structure located within the boundaries of the 100 Year Floodplain must comply with the requirements of Article XV Floodplain Overlay District.~~
 - d. ~~Improvements may include a new foundation, provided that all of the following conditions are met:~~
 - (1) ~~The new foundation shall be constructed from a vantage point entirely outside the Waterfront Buffer, or from within the structure itself, in a manner that does not disturb any part of the Waterfront Buffer beyond the footprint of the existing building.~~
 - (2) ~~No living space or basement area is added as a result of the new foundation.~~
 - (3) ~~No change in the footprint (drip line) of the structure (within the Waterfront Buffer) will result from the new foundation.~~
2. ~~If the Nonconforming Building or Structure straddles the Waterfront Buffer, then alteration or expansion of the Building or Structure is governed by the following:~~
 - a. ~~Alteration or expansion of that portion of the Building or Structure located within the Waterfront Buffer is governed by the provisions outlined in section J.1., above.~~
 - b. ~~Alteration or expansion of that portion of the Building or Structure located beyond the first 50 feet inland from the Normal High Water level is governed by the following:~~
 - (1) ~~Alteration or expansion is permitted upward, and outward to the side or rear of the Structure away from the lake.~~
 - (2) ~~Existing, covered porches located beyond the Waterfront Buffer may be enclosed and converted to habitable space and may be expanded upward beyond the footprint of the existing porch.~~

~~(3) Existing decks located beyond the Waterfront Buffer may be expanded, covered, enclosed and/or converted to habitable space.~~

~~3. These provisions supersede the provisions outlined in Article XX Legal Nonconforming Uses, Nonconforming Buildings and Non-conforming Lots, Paragraph B. Nonconforming Buildings, Section 1. The provisions of Article XX Legal Nonconforming Uses, Nonconforming Buildings and Structures and Non-conforming Lots, Paragraph B. Nonconforming Buildings and Structures, Sub paragraph 3. pertaining to Substantial Improvement, restoration, reconstruction and/or replacement apply to Article XVI Shore Land Overlay District.~~

~~K. Building Height: Nonconforming Structures located within the Waterfront Buffer in the Shore Land Overlay District shall not exceed 25 feet in Height above Grade.~~

ARTICLE XX (PAGES 82-83)
LEGAL NONCONFORMING USES, LEGAL NON-CONFORMING
BUILDINGS AND STRUCTURES, AND LEGAL NON-CONFORMING LOTS

A. Legal Nonconforming Uses: Any Legal Nonconforming Use may be continued indefinitely subject to the following limitations:

1. Resumption after Discontinuance: When a Legal Nonconforming Use of land, Structures or Buildings has been discontinued for one year, then the land, Structures and Buildings shall be used thereafter only in conformity with this Ordinance.
2. Change or Expansion: Any Legal Nonconforming Use shall not be changed to another Nonconforming Use. Any Legal Nonconforming Use shall not be expanded.
3. Superseded by a Conforming Use: If a Legal Nonconforming Use is superseded by a conforming Use, then it shall thereafter conform to the Use regulations of this Ordinance, and the Nonconforming Use may not thereafter be resumed.
4. Restoration, Reconstruction and/or Replacement of Buildings containing a Legal Nonconforming Use: Nothing herein shall prevent the restoration, reconstruction and/or replacement within 3 years of a Building containing a Legal Nonconforming Use destroyed in whole or in part by fire or other natural disaster so long as this Use does not result in a new or expanded Nonconforming Use.

B. Legal Nonconforming Buildings and Structures: Any Legal Nonconforming Building or Structure may be continued indefinitely and may be Altered, expanded, restored, reconstructed and/or replaced subject to the following limitations:

1. Alterations and Expansions of Legal Nonconforming Buildings and Structures in the Shore Land Overlay District: ~~Alterations and expansions of Legal Nonconforming Buildings and Structures located entirely or partly within the Shore Land Overlay District shall be governed by the provisions outlined in Paragraph H. Nonconforming Buildings and Structures in Article XVI Shore Land Overlay District. To be replaced with J 1 and J 2, to be renumbered.~~

J. Nonconforming Buildings & Structures: Any Nonconforming Building or Structure located entirely or partly within the Waterfront Buffer of all lakes and ponds over 10 acres in size may be continued indefinitely, Altered and/or expanded provided it complies with the following applicable provisions: (This to be renumbered)

1. If the Nonconforming Building or Structure is located entirely within the Waterfront Buffer, then alteration or repair of the Building or Structure is governed by the following:

a. Alteration or repair of the Building or Structure is only permitted within the existing footprint and outside dimensions, consistent with the provisions of Article XX, Section B, 3, provided the result is a functionally equivalent use. No footprint change or vertical expansion of the existing structure shall be allowed. Any expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system shall require approval by the NH Department of Environmental Services.

b. Existing decks and porches located entirely within the Waterfront Buffer may not be covered, enclosed or expanded upward or outward beyond the footprint of the existing deck or porch.

c. Any Substantial Improvement of an existing Nonconforming Structure located within the boundaries of the 100 Year Floodplain must comply with the requirements of Article XV Floodplain Overlay District.

d. Improvements may include a new foundation, provided that all of the following conditions are met:

(1) The new foundation shall be constructed from a vantage point entirely outside the Waterfront Buffer, or from within the structure itself, in a manner that does not disturb any part of the Waterfront Buffer beyond the footprint of the existing building.

(2) No living space or basement area is added as a result of the new foundation.

(3) No change in the footprint (drip line) of the structure (within the Waterfront Buffer) will result from the new foundation.

2. If the Nonconforming Building or Structure straddles the Waterfront Buffer, then alteration or expansion of the Building or Structure is governed by the following:

a. Alteration or expansion of that portion of the Building or Structure located within the Waterfront Buffer is governed by the provisions outlined in section J.I., above.

b. Alteration or expansion of that portion of the Building or Structure located beyond the first 50 feet inland from the Normal High Water level is governed by the following:

(1) Alteration or expansion is permitted upward, and outward to the side or

rear of the Structure away from the lake.

(2) Existing, covered porches located beyond the Waterfront Buffer may be enclosed and converted to habitable space and may be expanded upward beyond the footprint of the existing porch.

(3) Existing decks located beyond the Waterfront Buffer may be expanded, covered, enclosed and/or converted to habitable space.

K. Building Height: Nonconforming Structures located within the Waterfront Buffer in the Shore Land Overlay District shall not exceed 25 feet in Height above Grade. (Need to renumber)

2. Alterations and Expansions of all other Legal Nonconforming Buildings and Structures: Any Legal Nonconforming Building may be Altered or expanded provided, however, that such alteration or expansion does not make any existing Legal Nonconforming Building a more Nonconforming Building within the terms of this Ordinance and provided that all other standards of this Ordinance are met. For example, if an existing Structure does not comply with the Front Yard setback requirement, then this Structure could not be expanded to result in a Structure with less Front Yard setback unless a Variance was approved by the Zoning Board of Adjustment. However, the Structure could be expanded upward or to the side along the existing Nonconforming setback provided that the expanded Structure complies with all other standards of this Ordinance. If the expansion constitutes a Substantial Improvement, then the resulting Structure is permitted only if it complies with all of the standards of this Ordinance including the aspect that makes the existing Legal Nonconforming Building or Structure Nonconforming.
3. Substantial Improvement, Restoration, Reconstruction and/or Replacement of Legal Nonconforming Buildings or Structures:
 - a. Legal Nonconforming Building or Structure destroyed by Fire or Other Natural Disaster: Nothing herein shall prevent the restoration, reconstruction and/or replacement within 3 years of a Legal Nonconforming Building or Structure destroyed in whole or in part by fire or other natural disaster so long as the new Structure is a functionally equivalent use (with regard to number of Bedrooms and Dwelling Units), does not result in a Substantial Improvement (when compared to the original structure), and does not result in a more Nonconforming Building than was originally at the site.
 - b. Voluntary Replacement or Substantial Improvement of a Legal Nonconforming Building or Structure:
 1. For use with ARTICLE XV Floodplain Overlay District: The Substantial Improvement or voluntary replacement of a Legal Nonconforming Building or Structure is permitted only if it complies with all of the standards of this Ordinance including the aspect that makes the existing Building or Structure Nonconforming. This section does not include Building Maintenance within the types of work that comprise Substantial Improvement.

2. For use with all remaining ARTICLES of the Zoning Ordinance: The voluntary replacement or relocation of a Legal Nonconforming Building or Structure, or Alterations to a Legal Nonconforming Building or Structure that result in a 50% increase in the square footage of useable floor area (including decks, porches, basements, garages and attics, in addition to finished floor area) of that Structure is permitted only if it complies with all of the standards of this Ordinance including the aspect that makes the existing Building or Structure Nonconforming. For the purposes of this Section, additions to the square footage of floor area of any Structure shall be cumulative beginning with first improvement following the date of the adoption of this amendment.

C. Legal Nonconforming Lots:

1. ~~Legal Nonconforming Lots within the Shore Land Overlay District: Development of Legal Nonconforming Lots within the Shore Land Overlay District shall be governed by the provisions outlined in Paragraph J, Legal Nonconforming Lots in Article XVI Shore Land Overlay District.~~
2. All ~~Other~~ Legal Nonconforming Lots: Any other Lot with less area or Frontage than required which is lawfully established, recorded and taxed as a Lot of Record before the enactment or amendment of this Ordinance, shall be deemed a conforming Lot.
3. ~~To insure maximum conformity with this Ordinance, any abutting land in common ownership with said Lot of Record may, with the approval of the Planning Board, be merged with said Lot.~~

**ARTICLE XXII
STREAMS CONSERVATION OVERLAY DISTRICT (PAGES 90-93)**

- F. Permitted Uses: Permitted Uses are those which will not require the erection or construction of any Structures or Buildings; will not alter the natural surface configuration by addition of fill or by dredging; and Uses that are otherwise permitted by the Zoning Ordinance. Such Uses include the following:
- (8) Alteration, expansion or improvement of existing Nonconforming Structures and Buildings, consistent with the provisions of Article XX ~~of this Ordinance, and with cutting, clearing and erosion control plans approved by the Planning Board.~~