



DEP Issue Profile

Non-conforming Structures in the Shoreland Zone

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The information presented in this Issue Profile is based on standards in the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances*. If your community's locally adopted shoreland zoning ordinance has more restrictive standards those more restrictive provisions apply.

What is a non-conforming structure?

A non-conforming structure is one that does not meet one or more of the following dimensional requirements: shoreline setback (including setbacks from tributary streams, 2006), height, or lot coverage. It is allowed to remain solely because it was in lawful existence at the time the ordinance or subsequent amendments took effect.

Non-conforming structures can be maintained and improved, without a permit, as part of *normal* upkeep. However, significant reconstruction or repair, additions, expansions, or relocations require a permit from the municipal officials before work can begin.

Are there limitations on expansions of non-conforming structures?

Yes. Since January 1, 1989 the State's Mandatory Shoreland Zoning Act (Section 439-A(4)) has prohibited any portion of a structure which does not meet the shoreline setback requirement (typically 75 or 100 feet) from being expanded by 30% or more in floor area and volume. In addition, such structures cannot be expanded closer to the shoreline.

Effective July 9, 1998 the Shoreland Zoning Act was further amended to provide municipalities with an optional alternative for regulating expansions of structures that do not meet the waterbody or wetland setback standard. This option enables a municipality to limit expansion of such nonconforming structures based on total floor area and structure height, taking into consideration the structure's distance from the shoreline. A municipality can only administer this alternative, rather than the long-standing 30% expansion limitation rule, if it is specifically incorporated into the local ordinance. Otherwise, the 30% expansion limitation rule is in effect.

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The 30% Expansion Rule

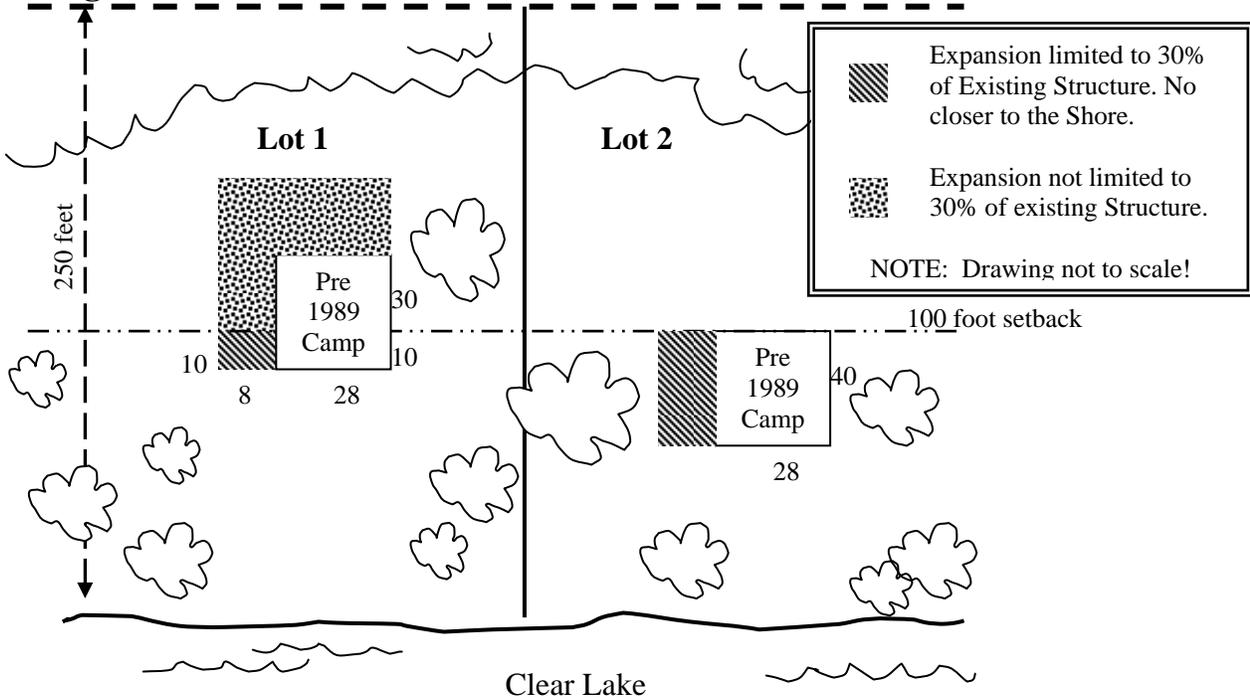
The expansion limitation noted in the above paragraph applies only to that part of the structure which is non-conforming. It does not apply to that part of the structure which meets the setback requirement. For example, if only a 10' x 28' section of a 40' x 28' building is non-conforming as to setback, only the 10' x 28' section is subject to the floor area and volume limitation. The remainder of the building can be expanded in compliance with other applicable standards, including lot coverage and building height limitations. (see diagram "A")

How are "volume" and "floor area" calculated?

Under the State Guidelines, floor area is the total square footage of all floors plus any porches and deck areas. Volume is defined as the cubic footage of all spaces enclosed within the exterior walls and roof of a structure.

IMPORTANT NOTE: Some town ordinances define volume and floor area to exclude certain areas such as unfinished attics, basements and certain storage areas. It is important to check the town ordinance before developing your plans.

Diagram A



Can I expand both the floor area and volume of my fully non-conforming structure up to the 30% limitation?

Yes. Both the volume and floor area can be expanded up to the 30% limitation. However, neither the floor area nor volume expansions can exceed the limitation. For example, if a proposal is made to expand the floor area by only 10%, but the proposed volume expansion is 35%, the project cannot be approved until the volume expansion is reduced below 30%.

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Basic Provisions of the Optional Alternative to the 30% Expansion Rule

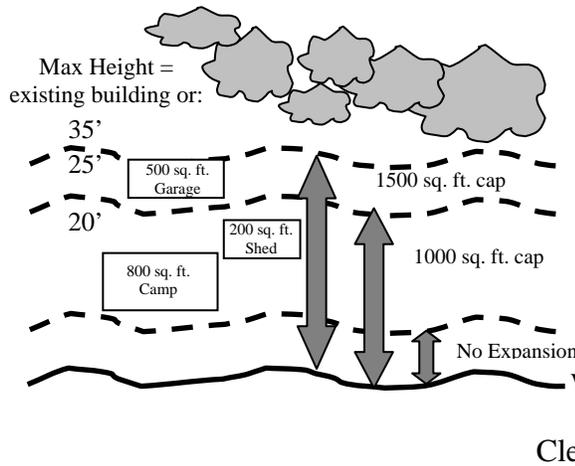
A municipality may, but is not required to adopt an alternative to the 30% expansion limitation rule, consistent with provisions enacted by the legislature in 1998. This optional method of limiting expansions of non-conforming structures is based on the following criteria:

1. No portion of a structure located within 25 feet of the shoreline can be expanded.
2. Expansion of an accessory structure that is located closer to the shoreline than the principal structure is prohibited.
3. For structures located less than 75 feet from the shoreline, the maximum combined total floor area of all structures is 1000 square feet, and the maximum height of any structure is 20 feet or the height of the existing structure, whichever is greater.
4. For structures located less than 100 feet from a great pond or river flowing to a great pond, the combined maximum total floor area for all structures is 1500 square feet, and the maximum height of any structure is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the shoreline must meet the floor area and height limits of criterion 3 above.

For the purposes of the alternative expansion limitation, an existing basement is not calculated toward floor area.

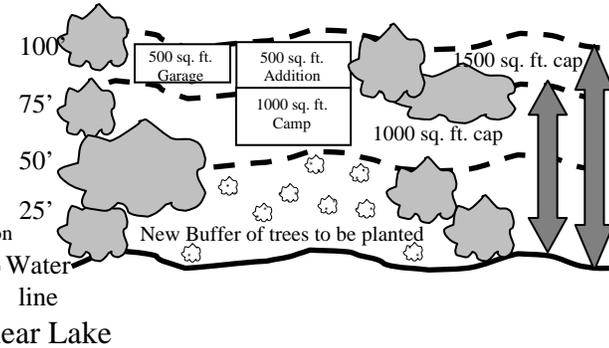
(See diagram B for a visual display of the basic alternative method of limiting expansions.)

**Diagram B
Expansion Option**



**Diagram C
Special Expansion Allowance**

Up to 500 sq. ft. above cap allowed provided:
Camp greater than 50' from shore,
Buffer planted and maintained within 50', and soil erosion and stormwater runoff problems addressed



The Special Expansion Allowance Pursuant to the Alternative Method of Limiting Expansions.

Under the alternative method of limiting expansions of nonconforming structures, a municipality may permit up to 500 additional square feet of floor area than that allowed above if: the structure is located at least 50 feet from the shoreline; an adequate 50-foot vegetated buffer exists or the owner agrees to plant a suitable buffer; and the owner agrees to implement a plan addressing erosion and stormwater runoff problems on the property. Other requirements may also apply. (See diagram C for a visual display of special expansion allowance)

If a municipality adopts the basic 1000/1500 square foot limits of the alternative to the 30% rule, does it also have to adopt the special expansion allowance?

No. The special expansion allowance (extra 500 square feet) is an optional provision. Whether to adopt the provision is for the municipality to decide.

Does the floor area cap apply to just the principal structure?

No. The cap applies to the total floor area of all principal and accessory structures located within the shoreline setback area, including the upper floors of multi-story buildings. As with the 30% expansion limitation rule, decks, porches, and patios also count as floor area.

Can a municipality adopt both the 30% expansion limitation and the alternative method of limiting expansions of nonconforming structures?

No. The expansion option, if adopted, replaces the 30% rule. The option can not be used in conjunction with the 30% rule to maximize expansions of nonconforming building expansions. The intent of the option is to provide a comparable, and equitable, amount of expansion in a format that is also easier to administer.

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Additional Standard Issues Pertaining to Non conforming Structures

Why does the Mandatory Shoreland Zoning Act Establish a Cap on Expansions of Non-conforming Structures?

There are several reasons for the 30% expansion limitation. However, the primary goal is to balance the need to maintain vegetated areas near the shoreline in order to protect water quality and control stormwater runoff, and to preserve the natural character of Maine's shoreland areas, while providing some expansion potential for structures which are closer to the shoreline than current standards allow.

Can a non-conforming structure be expanded in all directions?

No. Expansions, which reduce the already non-conforming setback, are not permitted. For example, regarding water and wetland setback requirements, no structure that is less than the required setback from the water or wetland, can be expanded toward the water or wetland. Similarly, a structure, which exceeds the height limitation, cannot be expanded upward. The same is true for the lot coverage limitation. If the buildings, driveways, and other non-vegetated areas already exceed the total lot coverage limitation, these areas cannot be expanded to further increase the lot coverage.

Although the Department's Guidelines do not require structures to be set back a minimum distance from roads and side lot lines, many local ordinances do contain such limitations and must be considered.

Can a foundation be added to a non-conforming structure?

Yes. Construction or enlargement of a foundation beneath an existing non-conforming structure is permitted. However, that addition will count toward the 30% expansion limitation unless: the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent (may require movement of structure away from a waterbody or wetland); the foundation does not extend beyond the exterior dimensions of the structure; and the foundation does not cause the structure to be elevated by more than three (3) additional feet. The State Guidelines do not require a structure to be moved away from the water or wetland when the replacement foundation is simply new posts. However, new cement slabs, frost walls, crawl spaces and basements will trigger the requirement to relocate the structure further from the water or wetland, if practical. In most cases, the planning board reviews applications for new or enlarged foundations.

Can a non-conforming structure be relocated on the same parcel provided that the setback is not further reduced?

Yes. However, if the structure is relocated it must meet the shoreline setback requirement to the greatest practical extent. If the lot has enough depth to relocate the structure beyond the setback requirement, the owner will be required to move the structure to that location. If the structure cannot be moved to the setback line, the owner will be required to move the building to the furthest practical distance from the waterbody or wetland.

If a non-conforming structure is damaged or destroyed can it be reconstructed or replaced?

Yes. If a structure is damaged or destroyed by less than 50% of the market value before such damage or destruction, it may be reconstructed in place after obtaining a permit from the local code enforcement officer. However, if the structure is damaged or destroyed by more than 50% of the market value of the structure before such damage or destruction occurred, it can only be reconstructed or replaced if the new structure is placed such that the setback requirement is met to the greatest practical extent, as determined by the planning board. The planning board must consider several factors when determining the appropriate setback, including the type and condition of any foundation that may have been part of the original structure.

The words "damaged" and "destroyed" include voluntary removal by the owners, as well as "Acts of God" such as fire, flood, wind or other causes.

Can the use of a non-conforming structure be changed to another use?

Perhaps. The use of a non-conforming structure can be changed provided that the new use will have no greater adverse impact on the water body or wetland, on the property itself, or on adjacent properties. The planning board makes that determination.

If I have a non-conforming structure and wish to modify it, whom should I contact?

You should first contact the local code enforcement officer for information on permitting requirements. In most cases the code officer can provide appropriate application forms and will direct you to the planning board. Most significant modifications to non-conforming structures must go through planning board review.