



TOWN OF FREEPORT, MAINE
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TO: FREEPORT TOWN COUNCIL

FROM: CAROLINE PELLETIER, TOWN PLANNER

RE: RECOMMENDED ZONING ORDINANCE AMENDMENTS - SECTION 202. D. NON-CONFORMING LOTS OF RECORD

DATE: TUESDAY, SEPTEMBER 6, 2022

Background: The Planning Board recently held a public hearing (09/28/22) pertaining to a proposed text amendment to Section 202. D. (*Non-Conforming Lots of Record*) of the Freeport Zoning Ordinance. The amendment would allow for the alteration of legally existing non-confirming lots of record provided that the alteration does not create any new non-conformity.

The agenda item was as follows:

ITEM II: PUBLIC HEARING – Proposed Amendments to Section 202. D. Non-Conforming Lots of Record of the Freeport Zoning Ordinance

This will be a public hearing pertaining to a proposed text amendment to Section 202. D. (*Non-Conforming Lots of Record*). The amendment would allow for the alteration of legally existing non-confirming lots of record provided that the alteration does not create any new non-conformity.

This item was something originally brought up by the Codes Officer as something the Planning Board may want to take into consideration. When someone has a legally non-conforming lot, they are unable to change the lot without losing the legal non-conforming status. For example, we have a property owner who has a lot that does not meet the required minimum lot area but wants to add additional land to their existing lot which pre-dates zoning. The amount of land they want to add would make their lot closer in size to the requirement minimum lot size, but not meet the requirement. The way the Ordinance is written, they would not have the ability to do this as they would essentially be creating a violation since they would lose the legal non-conforming status and not be creating a conforming lot.

Process: The Planning Board discussed the item and held a public hearing at the 09/28/2022 Planning Board meeting. Public notification was completed per the Rules of Order of the Freeport Planning Board. The Legal ad for the public hearing was published in the Times Record on 09/16/22 and 09/20/22. The text for the legal ad was as follows:

Public Notice

**TOWN OF FREEPORT
PLANNING BOARD–PUBLIC HEARING**

The Freeport Planning Board will hold a public hearing on Wednesday, September 28, 2022 at 6:00 pm in the Freeport Town Hall Council Chambers at 30 Main Street Freeport, Maine to discuss proposed text amendments to the following sections of Chapter 21 – Town of Freeport Zoning Ordinance:

1) **Section 202. D. Non-Conforming Lots of Record**

This will be a public hearing pertaining to a proposed text amendment to Section 202. D. (Non-Conforming Lots of Record). The amendment would allow for the alteration of legally existing non-confirming lots of record provided that the alteration does not create any new non-conformity.

The public is welcome to attend and may choose to attend in person or on Zoom. Information on how to participate (including information on how to join on Zoom) can be found on the meeting agenda posted on the meeting calendar of the Town's website at www.freeportmaine.com. Meeting materials will be available for viewing on the Town's website or by contacting the Planning Office at the Freeport Town Hall at (207) 865-4743 option 5.

The proposed amendments were recommended unanimously by the Planning Board and found to be consistent with the Comprehensive Plan.

**Proposed Amendments to the Freeport Zoning Ordinance regarding non-conforming lots of record
As recommended at the 09/28/22 Planning Board Meeting
(Text to be added is shown with an underline)**

Section 202. Non-Conformance

- A. Continuance of Non-Conformance: The lawful use of any building, structure, or land which is made nonconforming by reason of the enactment of this Ordinance, or which shall be made nonconforming by reason of a subsequent amendment, may be continued, subject to the following provisions:
- B. Non-Conforming Uses
1. Repairs and Alterations: A building or structure devoted to a non-conforming use may be repaired, maintained or improved, provided the number of square feet of floor area devoted to the non-conforming use is not increased except in accordance with the provisions of Section 202.C.(5). A non-conforming use may not be reconstructed except in accordance with the provisions of Section 202.C.(2);
 2. Extension of Use: The Zoning Board of Appeals may grant a variance for a one-time expansion of a non-conforming use up to a maximum of 15% of the gross floor area of the existing structure(s). A non-conforming open use of land may not be extended to any part of the remainder of the land except that excavation existing on January 16, 1990 may expand without a variance if such expansion is allowed under Section 509 of this Ordinance;
 3. Change in Use: A non-conforming use of a building, structure or land may be changed to another non-conforming use only when the impact of the new use on adjacent properties, water bodies wetlands, and upon the Town is less adverse than the impact of the former use and a permit is issued for such change by the Project Review Board applying the standards of and utilizing the procedures of Section 602. Upon such a change in use, the prior use shall be deemed abandoned. Whenever a non-conforming use is changed to a permitted use, such use shall not thereafter revert to non-conforming status;
 4. Abandonment: A non-conforming use of a building, structure or land shall be considered abandoned if, in the case of a building or structure, it remains vacant for a period of eighteen (18) months, and in the case of an activity, it ceases for a period of eighteen (18) months. Subsequent use shall conform to the regulations specified in this Ordinance for the district in which it is located.
 5. Use Begun Prior to Ordinance: Nothing herein contained shall require any change in plans, construction or structure, the construction of which shall have been diligently prosecuted previous to the date of enactment of this Ordinance, provided complete plans for such a use, building or structure shall have been timely filed with and accepted by the Codes Enforcement Officer;
- C. Non-Conforming Buildings
1. Expansion: A building or structure which is non-conforming with respect to the space requirements of this Ordinance may not be expanded, enlarged or increased unless such

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expanded or enlarged portion complies with the space requirements of this Ordinance. The Zoning Board of Appeals may grant a variance for a one-time expansion limited to 15% of the gross floor area of an existing non-conforming building or structure.

2. Reconstruction or Replacement: If a non-conforming building or structure is destroyed or damaged by less than 50% of the market value of the structure before the damage regardless of the cause, the owner retains the right to rebuild or restore the nonconforming building or structure provided that a permit is obtained within a period of twelve (12) months, or thereafter conform with the space requirements of this Ordinance unless a variance from such requirement is granted by the Board of Appeals.

If a non-conforming building or structure is destroyed or damaged by more than 50% of its value regardless of the cause, the building or structure may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of said damage, destruction, or removal, and provided compliance with all setback requirements is met to the greatest practical extent as determined by the Codes Enforcement Officer in accordance with the purposes of this Ordinance. In no case shall a building or structure be reconstructed or restored so as to increase its non-conformity. 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 in Sec. 202.1 Expansions, above, as determined by the non-conforming floor area and volume 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 required setback for the 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.202.4 below.

In determining whether the building or structure reconstruction or restoration meets the shore setback to the greatest practical extent, the Codes Enforcement Officer shall consider, in addition to the criteria in Section 602.F.1.L. below, the physical condition and type of the existing foundation, if any, and whether it is reasonably feasible to relocate it. {Amended, Effective 07/01/09}

3. Use of Non-Conforming Building: Notwithstanding any space and bulk requirements of this Ordinance, a non-conforming building or structure may be used for any use allowed in the zoning district where it is located, unless the definition of such use contained in Section 104 of this Ordinance or the district regulations contain specific dimensional requirements peculiar to the use which cannot be met in the existing structure or on the existing lot.
4. Construction Begun Prior to Ordinance: Nothing herein contained shall require any change in plans, construction or structure, the construction of which shall have been diligently prosecuted previous to the date of enactment of this Ordinance provided complete plans for such a building or structure shall have been timely filed with and accepted by the Codes Enforcement Officer.

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5. Residential Dwelling: Any existing residential dwelling and accessory buildings which, at the effective date of adoption or amendment of this Ordinance, becomes nonconforming because of failure to satisfy either the use standards or the space standards of the district in which it is located, may be extended or expanded or reconstructed provided that said extension, expansion or reconstruction is in compliance with all provisions of this Ordinance.
6. Hotels and Motels: Upon approval of a site plan by the Project Review Board, a hotel or motel which existed on July 5, 1995 and which at any time thereafter is non-conforming because it exceeds the maximum number of units allowed by the district regulations may increase the number of units by up to 30 units more than the number existing on July 5, 1995 and may, in connection with such increase, expand accessory facilities such as restaurants, meeting rooms and recreational facilities. Such increase or expansion shall not be considered an extension of use subject to Section 202 (B)(2). An increase or expansion under this Paragraph 7 shall preclude any further increase or expansion under Section 202 (B)(2). As used in this Paragraph 7, “unit” means every room which provides sleeping accommodations for guests, except that a suite of no more than two rooms may be counted as a single unit provided the rooms share an entry from the exterior or an interior common area and share one toilet facility which is accessible only from within that group of rooms.

D. Non-Conforming Lots of Record:

1. A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the minimum lot area, minimum road frontage and/or minimum shore frontage of the district in which it is located, may be built upon without a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership and provided further that all other provisions of this Ordinance are met, except that the minimum land area per dwelling unit or mobile home space standard requirement shall not apply to the construction or placement of a single dwelling unit or a single mobile home on such a lot of record;
2. If two or more contiguous lots or parcels are in single ownership of record at the time of adoption or amendment of this Ordinance, or at any time thereafter, and if all or part of the lots do not meet the minimum lot area of this Ordinance, the lands involved shall be considered to be a single parcel for the purposes of this Ordinance, and no portion of said parcel shall be built upon or sold which does not meet the minimum lot area of this Ordinance; nor shall any division of the parcel be made which creates any dimension or area below the requirements of this Ordinance. This subsection (2) shall apply only to lots which have not been improved separately with buildings or structures.

For the purposes of this sub-paragraph, lots shown on a subdivision plan approved by the Planning Board or the Project Review Board and recorded in the Registry of Deeds shall not be treated as lots held in common ownership if, within the three (3) years immediately preceding the effective date of this Ordinance or within three (3) years from the date on which such plan was approved, whichever is later, the owner(s) or ~~his~~their

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predecessor(s) has improved each lot by the completed construction of roads and the installation of utility services.

3. Alteration of non-conforming lots: A non-conforming lot, legally existing as of the effective date of this Ordinance, may be further divided or have its lot lines altered, provided that such action does not increase or extend the degree of, or create any new, non-conformity with regard to any applicable requirement of the zoning districts in which it is located. This provision shall not apply to lots that exist in the Shoreland Zone.