



TOWN OF FREEPORT, MAINE
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TO: FREEPORT TOWN COUNCIL

FROM: CAROLINE PELLETIER, TOWN PLANNER

RE: RECOMMENDED ZONING ORDINANCE AMENDMENTS – PERTAINING TO THE EXPANSION OF NON-CONFORMING STRUCTURES

DATE: TUESDAY, SEPTEMBER 6, 2022

Background: The Planning Board recently held two public hearings pertaining to the expansion of non-conforming buildings/structures.

The first public hearing was held on June 1, 2022 and the agenda item was as follows:

ITEM III: Proposed Amendments to Section 202.C.1 (Non-Conforming buildings) of the Freeport Zoning Ordinance – Public Hearing

This will be a public hearing to discuss possible amendments to Section 202.C.1. (Non-conforming buildings) of the Freeport Zoning Ordinance to consider a text change to allow an expansion of an existing non-conforming building if the non-conformance with regards to the space standards (of the applicable zoning district) does not increase.

Based upon discussion at the meeting, the Board decided it would be helpful to also add a definition for “Increase in non-conformity of a structure”. A public hearing on the proposed definition was held on August 3, 2022 and the agenda item was as follows:

ITEM III: PUBLIC HEARING – Proposed Amendments to Section 104. Definitions of the Freeport Zoning Ordinance

This will be a public hearing pertaining to adding a proposed definition for “increase in nonconformity of a structure”. *(Note: This definition is being proposed as a result of the Planning Board discussion/recommendation made at the June 2022 Planning Board meeting for text amendments to Section 202.C.1. (Non-conforming buildings) of the Freeport Zoning Ordinance that would allow for an expansion of an existing non-conforming structure if certain conditions are met).*

This item was brought to the Board by staff for consideration. When a property outside of the Shoreland Zone is non-conforming with regards to a space requirement of the Zoning Ordinance (such as a setback) an owner could only expand the structure (horizontally and/or vertically) if the expanded structure could comply with the-current space and bulk requirements. If the expansion would not comply with the current requirements, then an expansion that would increase gross floor area, could only be permitted with a variance granted by the Zoning Board of Appeals (per the process outlined in Section 601 of the Freeport Zoning Ordinance).

For example, we have had a few public inquiries recently from residents with existing homes who wish to construct a second story or construct a dormer for a bathroom or bedroom. Since the structures have an existing legal non-conformity (ie: does not meet today's required setbacks) this could only be permitted by staff if a variance was first granted by the Board of Appeals.

The current expansion of non-conforming structures requiring a variance from the Board of Appeals only applies to structures located outside of the Shoreland Zone. For legally existing non-conforming structures within the Shoreland Zone the ordinance currently (since amended in 2009) includes a provision that permits the Codes Enforcement Officer to issue a building permit-for an expansion of a non-conforming structure if the proposed expansion does not increase the non-conformity of the structure (if you can meet all of the other applicable standards).

The recommended Ordinance amendments were drafted to create a similar standard for all properties and would apply to all uses and structures.

For clarity, the Planning Board decided it would be helpful to add a definition for "increase in non-conformity of a structure". The proposed definition is very similar to the existing definition in the Town of Freeport Shoreland Zoning Ordinance.

Process: The Planning Board discussed the changes to Section 202.C.1 at the 5/4/22 and 6/01/22. Legal ads for the public hearing were published in the Times Record on 5/19/22 and 5/24/22. The text for the legal ad was as follows:



The graphic is a rectangular box with a grey border. At the top, it has a white background with the text "Public Notice" in bold black font. Below this is a horizontal line, followed by the text "TOWN OF FREEPORT PLANNING BOARD- PUBLIC HEARING" in bold black font. Another horizontal line follows, and then the main body of text in a standard black font: "The Freeport Planning Board will hold a public hearing on Wednesday, June 1, 2022 at 6:00pm in the Freeport Town Hall Council Chambers at 30 Main Street (Zoom option available) to discuss possible amendments to Section 202.C.1. (Non-conforming buildings) of the Freeport Zoning Ordinance. The proposed amendment would allow for an expansion of an existing non-conforming building if the non-conformance with regards to the space standards (of the applicable zoning district) does not increase. The public is welcome to attend and may choose to attend in person, or on Zoom. The meeting agenda (including information on how to join on Zoom) and any supporting materials can be viewed at the Freeport Town Office or on the Town's website at www.freeportmaine.com."

The Planning Board discussed the proposed amendment to Section 104. Definitions at the 7/6/22 and 8/3/22. Legal ads for the public hearing were published in the Times Record on 7/21/22 and 7/26/22. The text for the legal ad was as follows:

Public Notice

TOWN OF FREEPORT PLANNING BOARD–PUBLIC HEARINGS

The Freeport Planning Board will hold public hearings on Wednesday, August 3, 2022 at 6:00pm 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 104. Definitions and Section 514. Off-Street Parking and Loading**

This will be a public hearing pertaining to the parking requirements for residential uses in the Village Commercial I (VC-1) Zoning District. Amendments proposed for discussion include: amending the definition of Shared Parking; allowing multiple family dwellings in the VC-1 Zoning District to meet the parking requirement through a combination of shared and non-shared parking; and, the lowering the parking requirement for multiple family dwellings in the VC-1 Zoning District.

2) **Section 104. Definitions**

This will be a public hearing pertaining to adding a proposed definition for "increase in nonconformity of a structure". (Note: This definition is being proposed as a result of the Planning Board discussion/recommendation made at the June 2022 Planning Board meeting for text amendments to Section 202.C.1. (Non-conforming buildings) of the Freeport Zoning Ordinance that would allow for an expansion of an existing non-conforming structure if certain conditions are met).

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.

Recommendations from the Planning Board: The Planning Board made the following motions:

MOVED AND SECONDED: Be it ordered that the Freeport Planning Board make a recommendation to the Town Council to adopt the language of the Freeport Zoning Ordinance to consider a text change to allow an expansion of existing non-conforming buildings if the non-conformance in regards to the space standards does not increase and the language was presented at the June 1st, 2022 Planning Board meeting and that it is consistent with the Freeport Comprehensive Plan of making Freeport a livable community for growing families and affordable residential places. We will review this in one-years' time and see what applications have come before the Town to see if any amendments need to be made. (Child & Arsenault) **VOTE:** (5 Ayes) (0 Nays) (1-Excused- Kapala).

MOVED AND SECONDED: Be it ordered that the Freeport Planning Board recommends that the Freeport Town Council adopt the proposed amendment to the Freeport Zoning Ordinance, Section 104 definitions to include the language presented on August 3, 2022 at the Planning Board meeting which adds an increase in non-conformity of a structure definition in order to ensure consistency in interpretation of its meaning. The Planning Board finds this amendment is consistent with the Freeport Comprehensive Plan of making Freeport a livable community for growing families in affordable residential places. (Ball & Arsenault) **VOTE:** (7 Ayes) (0 Nays)

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 non-conforming 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

Proposed Amendments to Section 202 of the Freeport Zoning Ordinance

As recommended at the June 1, 2022 Planning Board Meeting

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1. Expansion: A building or structure which is non-conforming with respect to the space requirements of this Ordinance may ~~not~~ be added to or expanded, vertically or horizontally, after obtaining a permit from the Codes Enforcement Officer, if such expansion does not increase the nonconformity of the existing structures or create a new nonconformity. ~~enlarged or increased unless such 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 non-conforming 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

Proposed Amendments to Section 202 of the Freeport Zoning Ordinance

As recommended at the June 1, 2022 Planning Board Meeting

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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.
5. Residential Dwelling: Any existing residential dwelling and accessory buildings which, at the effective date of adoption or amendment of this Ordinance, becomes non-conforming 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;

Proposed Amendments to Section 202 of the Freeport Zoning Ordinance

As recommended at the June 1, 2022 Planning Board Meeting

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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 or his predecessor has improved each lot by the completed construction of roads and the installation of utility services.

Proposed Amendments to Section 104 of the Freeport Zoning Ordinance
As recommended at the August 3, 2022 Planning Board Public Hearing
(text to be deleted is shown with a strikethrough, text to be added is shown with an underline)

Note: Proposed language to be added alphabetically in Section 104. Definitions of the Freeport Zoning Ordinance.

Section 104. Definitions

Increase in nonconformity of a structure: Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the space standards of the zoning district. Included in this allowance are expansions which in-fill irregularly shaped structures.