

## **ARTICLE 9 NONCONFORMANCE**

**Section 9.01 Existing Nonconformance Uses and Structures** -This ordinance reflects the best judgment of the Town of Waterboro with respect to land use and is designed to both guide and bind all development activities, uses of land, and the construction, enlargement or renovation of all structures. However, those uses and structures, including accessory uses and structures, which do not conform to the provisions of this ordinance but which are in actual existence at the time of enactment of this ordinance, may be continued. But because nonconformance is inconsistent with the intent and objective, the creation or expansion of nonconforming activities is not encouraged.

A nonconforming use or activity which extends to only a portion of land in common ownership shall not be extended to the whole parcel if the redesign or realignment of lots is possible and will enable the activity to be undertaken in a conforming manner consistent with the provisions of this ordinance.

An existing nonconforming use or structure may not be physically moved to an alternative location where it will still be nonconforming--relocations must be undertaken in a manner that conforms to the provisions of this ordinance. An existing nonconforming use or structure at a particular site may not give way to an alternative activity which will also be nonconforming--changes in the use of land or structures must be in conformance with the provisions of this ordinance (see Section 2.04)

**Section 9.02 Existing Uses and Structures Which Conform With This Ordinance** -Uses of land or structures, which on the date of enactment of this ordinance are in compliance with the provisions of this ordinance, may not subsequently be converted to uses which are not permitted by the provisions of this ordinance subject only to the provisions in Section 2.07 dealing with uses similar in character to permitted uses. Nor may uses of land or structures, which on the date of enactment of this ordinance conform with the provisions of this ordinance, be subsequently expanded in a manner which gives rise to nonconformance unless such nonconformity is minor and meets all of the requirements for the issuance of a variance (see Section 2.08 and Article 10).

**Section 9.03 Replacement and Maintenance** - A nonconforming use or structure which is damaged by fire, explosion, flood, or other calamity may be rebuilt or repaired provided the restoration is completed within two (2) years and does not entail an expansion of the nonconforming use or structure.

Nothing in this ordinance precludes the normal upkeep and maintenance of nonconforming uses and structures; repairs renovations, or modernization's which do not involve expansion of the nonconforming use or structure; and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

**Section 9.04 Abolishment and Transfer** - A nonconforming use of land or structure permitted pursuant to the provisions of Section 9.01 may not be resumed if such use is abandoned or discontinued in actual fact a period of twelve (12) months. In either circumstance the renewed use of such land or structure must be in conformance with the provisions of this ordinance. When and if a nonconforming use of land or structures is converted by the landowner or lessee to a permitted or conforming use of the land or structures, the former nonconforming activities may not thereafter be resumed.

The owner of property which is nonconforming by virtue of the enactment and provisions of this ordinance may nonetheless sell, lease, or otherwise grant the property including the nonconforming use rights created in Section 9.01 to any person subject only to the conveying laws of the State of Maine and, of course, the limitations on nonconformance imposed by this ordinance.

**Section 9.05 Existing Nonconforming Lots and Pending Applications for Building Permits** Nonconforming single lots of record on the date of enactment of this ordinance may be utilized as provided in Section 2.08. Two or more contiguous lots of record in common ownership at the time or since adoption or amendment of this ordinance shall be combined and treated as a single lot or parcel of land. If the dimensional or area requirements of the district in which the combined parcel is situated are not met, development shall be in conformance with the provisions of this ordinance. (Amended 4/26/03)

Nonconforming use rights can not arise by the mere filing of a notice of intent to build, an application for required building permits, or an application for required state permits and approvals. Such rights arise only when actual construction has begun. Such construction must be legal at the time it is commenced and must be in possession of and in compliance with all validly issued permits, both state and local.

**Section 9.06 Nuisance** - State law provides, MRSA tit. 30 s4962 (1) (F) that "Any property or use existing in violation of any zoning ordinance is a nuisance." Nonconforming uses and activities which violate the provisions of this ordinance particularly Article 9, may pose unique problems and threaten both public and private interests. Accordingly, the Town of Waterboro in addition to the enforcement mechanisms available to it pursuant to Sections 12.02 and 12.03 of this ordinance may utilize any statutory provisions facilitating the abatement of nuisances or in the alternative the town may acquire such nuisances for purposes of demolition by either purchase or condemnation.