

**CITY OF BELFAST PLANNING BOARD  
DECEMBER 14, 2022 PUBLIC HEARING 6:00 P.M.  
COUNCIL CHAMBERS IN BELFAST CITY HALL**

**PROPOSED AMENDMENTS TO CITY CODE OF ORDINANCES  
CHAPTER 102, ZONING  
ARTICLE III, NONCONFORMANCE**

**Notes & Information to the Public Regarding the Proposed Amendments.**

**1) Background Information and Purpose of Amendments:**

The current language for Article III, Nonconformance was adopted in 1997. The Board is proposing a series of amendments to the current language, some of which represent significant changes in current requirements. Following is a general description of the proposed amendments and an explanation of why the Board is proposing such. Persons are advised to read the proposed amendments in their entirety to better understand all amendments that are being proposed.

- a) **Sec. 102-211. Generally (and other Sections).** The Board is proposing to increase the time period from 1 year to 2 years that applies to many nonconformities, such as the amount of time to replace a nonconforming structure destroyed by fire, flood, or similar disaster. The Board believes this increase is warranted because of the numerous issues a property owner must address in trying to rebuild a damaged structure or to replace or resume a nonconforming use.
  
- b) **Sec. 102-215. Type 2 Nonconformity.** A Type 2 Nonconformity involves the expansion of a residential structure that is nonconforming with respect to one or more of the minimum structure setback requirements. This is the most common type of nonconformity that involves a permit application to the Board. Overall, the approach recommended by the Board clarifies and tightens current nonconforming requirements. Some of the specific changes include:
  - The Board is proposing to retain the current requirement that none of a structure expansion in a nonconforming area can be closer to a lot line than the existing structure, however, it is proposing a new standard to require that no expansion can be closer to a lot line than 3 feet, unless a zoning district allows a lesser amount of setback (e.g. all setback requirements for the Downtown Commercial zone are 0 feet).
  - The Board is proposing to make it clear that a Type 2 Nonconformity would apply to all types of residential structures, including single-family, two-family, multi-family, detached accessory dwelling units, and accessory structures. In the past, the Board typically has interpreted this provision as applying mostly to single-family, two-family, and accessory structures.
  - A Type 2 expansion would continue to allow a 30% expansion of a nonconforming structure, however, the method of calculating the 30% expansion would change in 3 ways. An example for a theoretical property that depicts the difference between how

the current standards apply compared to the proposed changes is provided at the end of this amendment proposal.

- First, the amount of allowed structure expansion would be based only on the amount of the structure located within a nonconforming setback area, which is a change from the current approach the considers the total area of the structure when calculating the 30% expansion amount.
- Secondly, the calculation will separately be based on each floor of the structure, and this calculation will apply to the amount of nonconforming expansion that can occur on each floor of a structure. The current Ordinance allows upward expansions above an existing structure that is nonconforming as to structure setbacks.
- Lastly, separate calculations will be made for the amount of enclosed areas and open areas (such as a deck) that are nonconforming, and the amount of allowed expansion of each type of area will generally apply to that type of expansion. However, an applicant can choose to use some of the amount of square footage for the expansion of a nonconforming enclosed structure to expand a nonconforming open structure.

For most properties, the above standards, when considered both individually and collectively, likely will result in allowing a lesser amount of structure expansion in a nonconforming area than how the Board has interpreted the current Type 2 standards. The Board is recommending the amended standards for 2 main reasons:

- First and foremost, the Board believes it is important to make the current standards that often have been subject to multiple interpretations, more clear.
- Secondly, the Board believes it is appropriate to recognize that allowing what could be a sizable structure (houses, garages, sheds, et al) expansion in a nonconforming area is inconsistent with requiring conforming structures to satisfy all setback requirements. Thus, the Board believes implementing stricter limits on the amount of expansion for a nonconforming structure are warranted. In short, the Board's approach would lessen the current disparity between requirements that apply to a conforming structure and a nonconforming structure, and may make the following oft stated adage by Planning and Code Department staff less true; 'the best thing to own in Belfast is a nonconforming structure'.

The amendments to the Type II Nonconforming provisions also includes a recommendation for the City to recognize the terms of any Type 2 Permit previously issued that identifies an amount of remaining nonconforming expansion (amount less than the lifetime 30% allowed amount) until December 31, 2027, rather than immediately applying the now proposed Type 2 standards to a new request for a nonconforming expansion. In short, terms of existing Type 2 Permits would be grandfathered for about 5 years.

- c) **Sec 102-216. Type 3 Nonconformity.** A Type 3 Nonconformity involved a reduction in structure setback requirements for a nonconforming vacant lot of record. The Board is proposing the repeal of these provisions. The Board, consistent with a recommendation from Planning and Code Department staff, believe a request to reduce structure setbacks

for a vacant nonconforming lot of record is more appropriate for the Zoning Board of Appeals to consider as a variance.

- d) **Sec 102-217. Type 4 Nonconformity.** A Type 4 Nonconformity involves the expansion of a nonresidential structure that is nonconforming as to structure setback requirements. Current Ordinance provisions do not allow the expansion of a nonresidential structure that is nonconforming as to structure setbacks. The Board is recommending the adoption of standards similar to those now proposed for a Type 2, nonconforming residential structure, to allow certain expansions of a nonresidential structure that does not comply with setback requirements. In addition, the Board proposes to retain the current standards that allow a nonconforming nonresidential use to expand within the interior/footprint of an existing structure. While nonresidential structures typically conform to structure setback requirements, the Board believes the recommended standards may benefit a limited number of existing nonresidential uses, particularly ones that were constructed prior to 1985.
  - e) **Sec. 102-222. Type 6 Nonconformity, Replacement of an Existing Nonconforming Structure.** This Section has allowed the replacement of an existing structure that is nonconforming to setback requirements if it was damaged by fire or a similar event, or removed by the property owner. The amendments proposed by the Board would continue to allow this practice, however, the Board is recommending additional standards that would provide guidelines for a replacement structure. The Board believes the proposed guidelines are warranted for this type of development.
  - (f) **Sec 102-224. Type 7 Nonconformity, Nonconforming to Lot Coverage Requirements.** Beginning with the adoption of the Inside the Bypass Zoning District standards in 2014, most zoning districts in Belfast now have or will soon have maximum lot coverage requirements. This section identifies an approach that would allow either a residential or nonresidential use that is nonconforming with respect to lot coverage standards an opportunity to expand beyond the identified lot coverage limits.
  - (g) **Sec 102-244. Type 8, Change in a Nonconforming Use.** The current Ordinance states that the Planning Board has the authority to allow a change from one type of nonconforming use to a different nonconforming use, but does not provide any guidelines for the Board to follow in making such a decision. The proposed amendments identify guidelines for the Board to follow.
- 2) **Format of Amendment:** Language/text in black font is current language in the Ordinance that is not proposed to be changed by this amendment. Language/text proposed to be added to the existing Ordinance is shown in **Red Font**. Language/text proposed to be deleted from the existing Ordinance is shown in ~~Blue Strike-through Font~~. Language text **highlighted in Yellow** typically identifies a date that needs to be inserted in the Ordinance based on the date of potential Council adoption.

### **3) Role of the Belfast Planning Board:**

The Belfast Planning Board is responsible for conducting a public hearing and offering its recommendation to the Belfast City Council regarding proposed amendments to the land use regulations in the City Code of Ordinances. The Planning Board has discussed the proposed amendments to the Nonconforming provisions at several meetings, and is now presenting its proposed amendments for public hearing. Post the hearing, the Board will discuss public comment that may be offered at the public hearing, and vote on its recommendation to the City Council. The Planning Board, in crafting its recommendation to the Council, has the authority to make changes to the language presented in the Planning Board public hearing draft amendments. The Planning Board is an administrative/quasi-judicial body, and does not have the authority to adopt, amend, or repeal an Ordinance. That authority is vested solely with the City Council, the legislative body for the City.

The City Council, after it receives the Planning Board's recommendations, will conduct two public readings (First Reading and Second Reading) and at least one duly noticed public hearing on the proposed amendments. The City Council has the authority to adopt, reject, change, or table the amendments presented by the Planning Board. If the Council adopted the amendments, they will become part of the City Code of Ordinances.

### **4) How to Offer Public Comment:** The City of Belfast and Belfast Planning Board encourage public comment on the proposed amendments. Any member of the public can offer comment to the Planning Board for this public hearing in any of the following three ways:

- a) Comment can be submitted in writing via email to [public@cityofbelfast.org](mailto:public@cityofbelfast.org). All email comment must be received by 2:00 pm on December 14, 2022. Persons who may want to offer extensive (longer) comment are particularly encouraged to submit comment via email or by letter.
- b) Comment can be submitted in writing via letter to City of Belfast, Planning and Codes Department, 131 Church St, Belfast, ME, 04915. The letter must be received by 2:00 pm on December 14, 2022, so it can be photocopied and presented to the Board. Persons who may want to offer extensive (longer) comment are particularly encouraged to submit comment via email or by letter.
- c) Comment can be orally presented to the Board at the December 14, 2022 Board meeting that begins at 6:00 pm in the Council Chambers of Belfast City Hall. Oral comment should be limited to 3 minutes. All oral comment must be delivered at the Board meeting; the City is not offering opportunities to offer oral comment via a ZOOM webinar to the Board.

Also, if you submit comment in writing or via email, recognize that the Board has a policy of not reading such comments aloud to the public at the Board meeting. The Board will acknowledge that you submitted comment, and the Planning and Codes Department will post your comments on the City website after the public hearing.

### **5) Questions and Information on the Proposed Amendments.** The complete text of this proposed amendment can be found on the City website, [cityofbelfast.org](http://cityofbelfast.org), reference Planning and Codes, Planning Board Hearing Amendments, and a printed copy of the amendments can be inspected at the Planning and Codes offices during normal business hours, Monday - Thursday, 7:00 am - 6:00 pm. Questions regarding the proposed amendments should be

directed to the Planning and Codes office at 338-3370 x 125, or by email to Wayne Marshall, Project Planner, at wmarshall@cityofbelfast.org.

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## TEXT OF PROPOSED ORDINANCE AMENDMENTS

### CHAPTER 102, ZONING,

#### ARTICLE III, Nonconformance.

##### Sec. 102-211 Generally.

[Ord. No. 28-1997, § 201.0, 3-4-1997]

- a) Any use of buildings, structures, premises, land or parts thereof legally existing at the effective date of the **e**Ordinance from which this **e**Chapter is derived and made nonconforming by the provisions of this **e**Chapter or any amendments thereto, may be continued as legally nonconforming uses, subject to the provisions of this **a**Article.
- b) **Except as provided in this Article, a nonconforming use, a structure in which a nonconforming use occurs, a structure that is nonconforming with respect to dimensional requirements for a respective zoning district, a lot that does not comply with either or both of the minimum lot frontage and minimum lot size dimensional requirements for a respective zoning district, and a lot that exceeds the maximum allowed lot coverage dimensional requirements for a respective zoning district, shall not be expanded so as to increase the portion of a property or structure located thereon that is used for a nonconforming use or activity.**
- c) **The nonconforming status of a structure or property shall run with the property and not a specific owner or lessee of said property.**
- d) **An increase in the intensity or volume of business, where there is no increase in the amount of space dedicated to the use nor any change in the specific nature of the use, is not considered an enlargement or expansion of a legally established nonconforming use.**
- e) **A legally established nonconforming use may be continued and used for the same nonconforming purpose regardless of its noncompliance with the use regulations in this Chapter.**
- f) **Any structure, building, or site containing a legally established nonconforming use may be physically repaired, maintained, and/or renovated, as long as the total area within the structure, building, or site dedicated to the nonconforming use is not**

changed or expanded, and as long as there is no change in the specific nature of the nonconforming use. Any building or structure containing a legally established nonconforming use that is destroyed or damaged by fire, lightning, wind, flood, or other casualty may be rebuilt within 2 years of the date of loss and the nonconforming use may continue, provided there is no increase in the total area dedicated to the nonconforming use and no change in the specific nature of the use. The 2 year time period identified in this provision means that an applicant/owner shall have obtained a City building permit within 2 years of the loss, and commenced substantial construction. The completion of construction shall comply with terms of the issued building permit. A reconstructed building, however, shall comply with Chapter 74, Building and Building Regulation, requirements.

- g) Notwithstanding the provisions of Article III, Nonconformance, a property located in a Shoreland Zone must comply with Chapter 82, Shoreland, requirements, a property located in a Flood Zone must comply with Chapter 78, Floods, requirements, and a project that involves the renovation, expansion, or reconstruction of a structure must comply with Chapter 74, Building and Building Regulations. Chapter 82, Shoreland, and Chapter 78, Floods, identify specific standards and a process for consideration of nonconforming situations.
- h) Replacement structures that are permitted uses subject to Planning Board review in this Chapter shall not be considered new structures for zoning purposes.
- i) ~~Notwithstanding any provisions in this Article to the contrary, no~~ Effective March 4, 1997, any and all yard sale or yard sale operations shall ~~be construed as being allowed~~ conform to the respective standards identified in Article V, District Regulations, of this Chapter. No yard sale or yard sale operation that existed on or prior to March 4, 1997, or that was established after that date, shall qualify as a legally established nonconforming use of record which may be continued, unless said use conforms ~~otherwise in accordance~~ with the provisions of this eChapter relating to yard sales.

**Sec. 102-212 Abandonment of a nNonconforming uUse.**

[Ord. No. 28-1997, § 202.0, 3-4-1997]

**Effective January 1, 2023, if** ~~if~~ any nonconforming use ceases for any reason for a period of ~~one~~ **two (2)** years or more, any subsequent use shall conform to the provisions of this eChapter, unless specifically excepted in this eChapter.

**Sec. 102-213 Change of a nNonconforming uUse to a pPermitted uUse.**

[Ord. No. 28-1997, § 203.0, 3-4-1997]

Whenever a nonconforming use is changed to a permitted use, the use of the land **or building/structure** shall not thereafter revert to a nonconforming use, notwithstanding any other provisions of this aArticle.

**Sec. 102-214 Type 1 nNonconformity. Section repealed by Council on ---, (insert date of Council action on amendment).**

[Ord. No. 28-1997, § 204.1, 3-4-1997]

- ~~(a) A type 1 nonconformity is a legal nonconformity with regard to the use of, or activity undertaken upon a property. Except as provided in this chapter, such nonconforming use shall not be expanded so as to increase the portion of a property or structure located thereon used for such a nonconforming use or activity.~~
- ~~(b) An application to expand a legally nonconforming business or commercial use that would increase the presently used legally nonconforming use by up to 25% of the area presently in nonconforming use shall be approved by the Planning Board if all of the following conditions are met:
  - ~~(1) The expansion will not result in unsafe or unhealthful conditions either in the structure or in an area lying within a three-hundred-foot radius of the proposed expansion;~~
  - ~~(2) The parking needs generated by such expansion can and will be met by off-street parking on the premises. It is the intent of this provision to assess only the parking needs of the expansion and not the adequacy of parking or availability of parking of the existing legally nonconforming use;~~
  - ~~(3) The character of the appearance of the exterior of the structure containing the use shall not be substantially changed; and~~
  - ~~(4) The expansion shall take place within an existing structure and shall not involve changing the footprint of the structure in which the use takes place.~~~~

**Sec. 102-215 Type 2 nNonconformity, Expansion of Residential Structures.**

[Ord. No. 28-1997, § 204.2, 3-4-1997; Ord. No. 67-1998, 4-21-1998]

- (a) A ~~†~~**Type 2 nNonconformity** involves a situation in which **an the** existing **residential** use of a property is legally conforming or legally nonconforming; however, some portion of a legally existing **residential** structure **or accessory structure to the residential use** located ~~upon~~ **on** the property is legally nonconforming with regard to the **minimum structure setback** standards set forth for each ~~d~~**District** in ~~a~~**Article V** of this ~~e~~**Chapter**.
- (b) No structure or use which is nonconforming with regard to **the maximum structure height standards set forth for each District in Article V of this Chapter** may be expanded or increased with regard to such existing nonconforming **structure** height. **In addition, an existing structure that complies with the maximum structure height standard for a respective zoning district shall not increase the height of any structure in excess of the respective maximum structure height standard.**

~~(e) A vacant existing lot of record as of July 26, 1985, which does not meet the area and/or frontage requirements of the district wherein located may be built upon, provided that relief from the standard district lot line setbacks is granted, provided that no setback shall in any circumstance be less than eight feet. Repealed by Council on ---- date ---- (insert date of Council action on amendment).~~

(d) Any **residential** dwelling ~~unit~~ **structure** or **accessory structure to a residential use building** on an existing conforming or nonconforming lot of record as of July 26, 1985, may be expanded or enlarged, provided the following conditions are met:

- (1) The **nonconforming** expansion shall not bring any portion of **an individual such** structure any closer to a lot line than the existing nonconforming structure. ~~This provision shall not, however, prevent an upward expansion of an existing structure, provided such upward expansion is no closer to a lot line than the existing nonconforming structure setbacks;~~ **Notwithstanding this provision, no portion of any expansion of a nonconforming residential structure shall be located within three (3) feet of an existing lot line, unless Article V, Districts, allows a lesser structure setback for a respective zoning district.**
- (2) An expansion of **the footprint of** a structure constructed within what would normally be required for a **minimum** lot line setback shall be limited during the lifetime ~~of the structure or replacement structure to a twelve-foot extension~~ of the existing nonconforming structure ~~or~~ to **thirty percent (30%) of the portion of the footprint usable area** of the structure ~~(as measured in square feet), whichever is greater that~~ **is located within the nonconforming setback area for the structure from any and all of the respective lot lines. The amount of nonconforming expansion allowed pursuant to this calculation can be applied to any nonconforming setback area of the structure; the nonconforming expansion is not limited to a specific nonconforming setback area.**
- (3) **An expansion that involves the expansion of one or more upper stories of a structure shall be limited during the lifetime of the existing nonconforming structure to a maximum of thirty percent (30%) of the area (as measured in square feet) of the respective floor/story of the structure that is located within the nonconforming setback area of any and all of the respective lot lines. The amount of nonconforming expansion allowed pursuant to this calculation, can be applied to any nonconforming setback area for that floor/story of the structure; the nonconforming expansion is not limited to a specific nonconforming setback area.**
- (4) **In calculating the amount of a nonconforming expansion that may be permitted pursuant to clauses (2) and (3) above, the amount of nonconforming expansion shall separately be calculated for the amount of an enclosed structure and the amount of an open structure, such as a deck, on the respective story/floor of a structure. The allowed amount of nonconforming expansion calculated for an enclosed structure can be applied to the expansion of either an enclosed structure or an open structure within the nonconforming area, provided such occurs on the**



same story/floor of the structure upon which the calculation was based, however, the allowed amount of nonconforming expansion calculated for an open structure shall only be applied to the expansion of an open structure within the nonconforming area, provided such occurs on the same story/floor to the structure upon which the calculation was based.

If a nonconforming expansion of an open structure within a nonconforming setback area is based upon the calculation of the amount of nonconforming area for an open structure, the expansion of the open structure shall not involve the creation of any usable area above that open structure.

- (5) The construction or enlargement of a new or replacement footer, slab, frost wall or full foundation, even if said construction results in the creation of habitable (usable) space, shall be permitted in any area underneath an enclosed structure or an open structure that is granted a Type 2 Nonconforming Permit by the Planning Board, provided none of the construction in the nonconforming area extends beyond the exterior dimensions of the structure permitted in the Type 2 Nonconforming Permit. The above types of construction shall not factor into the amount of nonconforming expansion that is permitted pursuant to a Type 2 Nonconforming Permit, however, the proposed construction must be identified in the Type 2 Permit issued by the Board.
- (6) In calculating the amount of nonconforming structure expansion, and the amount of structure setback from a lot line, the following standards shall apply:
  - a. Landings (stoops) that are 3 ft x 4 ft or less in dimension and steps shall not be considered in the calculation in the amount of nonconforming structure expansion that is permitted, nor shall the construction of any such new or replacement landings (3 ft x 4 ft or less) or steps apply to the amount of nonconforming structure expansion that is permitted.
  - b. Landings (stoops) that are 3 ft x 4 ft or less in dimension and steps shall not be used to establish the amount of structure setback from a lot line, and new or replacement landings (3 ft x 4 ft or less) and steps shall be permitted regardless of the amount of setback from a lot line.
  - c. The amount of structure setback from a lot line shall be determined based on a portion of a structure, such as a wall or roof line, that is at least 4 feet in length, and shall not be based upon a single point of a structure.
- (7) The Council, in adopting amended standards for a Type 2 Nonconformity on --- insert date of Council action ---, recognized that the Planning Board, pursuant to the Article III, Nonconformance provisions adopted on March 4, 1997, used a different methodology to calculate the amount of allowed nonconforming expansion, and that the amendments to the Type 2 standards adopted on --- insert date of adoption --- likely will have a varying amount of impact on the amount of

expansion granted compared to past Type 2 Permits that have been issued. Thus, pursuant to a permit request from a property owner, until December 31, 2027, the City shall recognize the amount of remaining nonconforming residential expansion for a specific property identified in a Type 2 Permit validly issued by the Planning Board. Notwithstanding this provision, an applicant/owner can chose to submit a Type 2 Permit application in accordance with the amended formula adopted on **(-- insert date of Council action --)**, rather than a previously issued Type 2 Permit. After December 31, 2027, all Type 2 Permits shall be based solely on the methodology identified in the **-----insert date of Council action ----** amendments, regardless of any past permits issued for a Type 2 Nonconformity pursuant to terms of the 1997 Ordinance.

- (8) A structure or structures on a property for which a Type 2 Permit was issued prior to **-- insert date of Council action ---**, and that used all of the thirty percent (30%) lifetime expansion allowed pursuant to Section 102-215(d) in Article III, Nonconformance, that was adopted on March 4, 1997, shall not have the right to submit or request a Type 2 Permit pursuant to the methodology identified in the amended Sec 102-215 provisions adopted on **--- insert date of Council action ---**. Said structures and properties used all of the amount of lifetime expansion permitted, and thus, no longer qualify to request an additional nonconforming expansion.

In addition, prior to December 31, 2022, a limited number of properties were granted a Type 2 Permit based on the "12 foot standard" identified in the former provisions of the 1997 Ordinance, reference former Section 102-215(d). A property that was granted a nonconforming expansion permit for a structure or structures pursuant to the former 12 foot standard are assumed to have used the equivalent of a thirty percent (30%) expansion, and cannot submit or request a Type 2 Permit pursuant to the methodology identified in the amended Sec 102-215(d) provisions adopted on **--- insert date of Council action ---** , unless an applicant/owner can provide evidence that any and all past expansions that were granted and constructed pursuant to the former 12 foot standard would allow an additional expansion pursuant to the amended methodology for calculating a nonconforming expansion for a Type 2 Permit adopted on **---- insert date of Council action ---**.

- (9) The applicant shall be responsible for submitting a Type 2 Permit application that clearly identifies the size and location of the existing structure, that identifies the amount of the existing structure in the nonconforming area, that identifies the amount and location of the proposed expansion, that describes the purpose of the proposed expansion, and that describes how the applicant believes the project complies with requirements of this Article. An applicant, if requested by the Planning and Codes Department or Planning Board, shall be required to prepare a property survey that addresses the above requirements.

**Sec. 102-216. Type 3 ~~n~~Nonconformity. This Section was repealed in its entirety by the Council on ---- insert date of adoption of amendments ---.**

[Ord. No. 28-1997, § 204.3, 3-4-1997]

- ~~(a) A type 3 nonconformity is a vacant lot which is legally nonconforming dimensional requirements or area required by this chapter.~~
- ~~(b) A lot with a type 3 nonconformity may be built upon, provided that relief from the standard district lot line setbacks for a district is granted provided that no setback in any circumstance shall be less than eight feet~~

**Sec. 102-217 Type 4 ~~n~~Nonconformity, Expansion of a Nonresidential Structure.**

[Ord. No. 28-1997, § 204.4, 3-4-1997]

**4.1** A ~~†~~**4.1 ~~n~~Nonconformity** is an existing ~~commercial or industrial~~ **nonresidential** structure on a conforming lot of record or a legally **established** nonconforming lot of record, ~~which and~~ the structure is legally nonconforming with regard to **one or more minimum structure setbacks requirements for the respective zoning district in which it is located**. Such structures may be expanded, ~~provided the expansion will meet all of the setbacks that are applicable to the district. This provision shall not prevent an upward expansion of the original structure, provided the height limit in the district shall not be exceeded and provided such upward expansion is no closer to a lot line than the existing nonconforming structure setbacks.~~ **subject to the following standards:**

- (a) The nonconforming expansion shall not bring any portion of an individual structure any closer to a lot line than the existing nonconforming structure. Notwithstanding this provision, no portion of any expansion of a nonconforming structure shall be located within five (5) feet of an existing lot line, unless the minimum structure setback standards identified in Article V, District Regulations, for a respective zoning district allow a structure setback of five (5) feet or less.**
- (b) A nonconforming expansion of the footprint of a structure constructed within what would normally be required for a minimum lot line setback shall be limited during the lifetime of the existing nonconforming structure to thirty percent (30%) of the area (as measured in square feet) for the portion of the footprint of the structure that is located within the nonconforming setback area from any and all of the respective lot lines. The amount of nonconforming expansion allowed pursuant to this calculation can be applied to any nonconforming setback area of the structure; the nonconforming expansion is not limited to a specific nonconforming setback area.**
- (c) A nonconforming expansion that involves the expansion of one or more existing upper stories of a nonresidential structure shall be limited during the lifetime of the existing structure to a maximum of thirty percent (30%) of the area (as measured in square feet) of the respective floor/story of the structure. The amount of nonconforming expansion allowed pursuant to this calculation, can be**

applied to any nonconforming setback area for that floor/story of the structure; the nonconforming expansion is not limited to a specific nonconforming setback area.

- (d) In calculating the amount of a nonconforming expansion that may be permitted pursuant to clauses (b) and (c) above, the amount of nonconforming expansion shall separately be calculated for the amount of an enclosed structure and the amount of an open structure, such as a deck, a walkway or a display area that may or may not have a roof. The allowed amount of nonconforming expansion calculated for an enclosed structure can be applied to the expansion of either an enclosed structure or an open structure within the nonconforming area, provided such occurs on the same story/floor of the structure upon which the calculation was based, however, the allowed amount of nonconforming expansion calculated for an open structure shall only be applied to the expansion of an open structure within the nonconforming area, provided such occurs on the same story/floor to the structure upon which the calculation was based.

If a nonconforming expansion of an open structure within a nonconforming setback area is based upon the calculation of the amount of nonconforming area for an open structure, the expansion of the open structure shall not involve the creation of any usable area above that open structure.

- (e) The construction or enlargement of a new or replacement footer, slab, frost wall or full foundation, even if said construction results in the creation of habitable (usable) space, shall be permitted in any area underneath an enclosed structure or an open structure that is granted a Type 4.1 Nonconforming Permit by the Planning Board, provided none of the construction in the nonconforming area extends beyond the exterior dimensions of the structure permitted in the Type 4.1 Nonconforming Permit. The above types of construction shall not factor into the amount of nonconforming expansion that is permitted pursuant to a Type 4.1 Nonconforming Permit, however, the proposed construction must be identified in the Type 4.1 Permit issued by the Board.
- (f) In calculating the amount of nonconforming structure expansion, and the amount of structure setback from a lot line, the following standards shall apply:
- a. Landings (stoops) that are 3 ft x 4 ft or less in dimension and steps shall not be considered in the calculation in the amount of nonconforming structure expansion that is permitted, nor shall the construction of any such new or replacement landings (3 ft x 4 ft or less) or steps apply to the amount of nonconforming structure expansion that is permitted.
  - b. Landings (stoops) that are 3 ft x 4 ft or less in dimension and steps shall not be used to establish the amount of structure setback from a lot line, and new or replacement landings (3 ft x 4 ft or less) and steps shall be permitted regardless of the amount of setback from a lot line.

c. The amount of structure setback from a lot line shall be determined based on a portion of a structure, such as a wall or roof line, that is at least 4 feet in length, and shall not be based upon a single point of a structure.

(g) An applicant/owner that proposes a Type 4.1 expansion that may result in an increase in on-site parking requirements pursuant to the Chapter 98, Technical Standards, Sec. 98-242, shall demonstrate to the satisfaction of the Planning Board that the amount of on-site parking that is provided is adequate for the use, including the amount of the proposed expansion.

4.2 A Type 4.2 nonresidential expansion involves an application to expand a legally established nonconforming nonresidential use that would increase the amount of area (as measured in square feet) located within one or more structures that is devoted to one or more nonresidential uses by up to thirty (30%) of the area (floor space) located in a respective structure that is devoted to a nonconforming activity. A Type 4.2 expansion does not involve a physical expansion of the structure, and only involves increasing the amount of a nonconforming use within an existing structure. The Planning Board shall approve a Type 4.2 application if all of the following conditions are met:

- (1) The expansion will not result in more detrimental or objectionable impacts with respect to unsafe or unhealthful conditions, either in the structure or in an area lying within a three-hundred-foot radius of the proposed expansion;
- (2) The parking needs generated by such expansion shall, as deemed appropriate by the Planning Board, satisfy parking requirements identified in Article VIII, Parking and Loading Facilities, in the Chapter 98, Technical Standards. It is the intent of this provision to assess only the parking needs of the expansion, and not the adequacy of parking or availability of parking of the existing legally established nonconforming use;
- (3) The character of the appearance of the exterior of the structure containing the use is improved or is not substantially changed; and
- (4) The expansion shall take place within an existing structure and shall not involve changing the footprint or height of the structure in which the use occurs.

4.3. An applicant for a Type 4.1 or 4.2 Permit shall be responsible for submitting a Permit application that clearly identifies the following: the size and location of the existing structure, the amount of the existing structure in the nonconforming area, the amount and location of the proposed expansion within the structure, and that describes the purpose of the proposed expansion, and how the applicant believes the project complies with requirements of this Article. An applicant, if requested by the Planning and Codes Department or Planning Board, shall be required to prepare a property survey that addresses the above requirements.

**Sec. 102-218 Type 5 Nonconformity, Status of Nonconforming Uses in Certain Zoning Districts.**

[Ord. No. 28-1997, § 204.5, 3-4-1997; Ord. No. 14/15-2000, 8-15-2000]

A ~~¶~~**Type 5 Nonconformity** is an expansion of a legally **established** nonconforming use located in the following zoning districts: **Outside Rural-1, Outside Rural-2, Residential-4, Residential-5, Residential-6, Route 3 Rural, Lower Congress Mixed Use, Swan Lake Avenue Mixed Use,** and ~~General Purpose "A" District, General Purpose "B" District, Residential/Agricultural I District, Residential/Agricultural II District, Protection Rural District~~ Airport Growth. ~~Districts, and that section of the Residential Growth District that is located west of the Route One By-Pass.~~ Any such expansion shall be ~~approved as provided subject to review and approval pursuant to the Permit process identified in s~~**Section 102-103, and if applicable, Chapter 90, Site Plan.** ~~provided that the~~ **The proposed** expansion ~~does shall~~ not include land ~~which has been~~ acquired after the enactment of the ~~o~~**Ordinance** from which this ~~e~~**Chapter** ~~is~~ **was initially** derived, March 14, 1995, and provided that all applicable standards are met.

**Sec. 102-219 Public hearing on application for change, expansion or replacement of use. Section repealed by Council on --- insert date ---.**

~~[Ord. No. 28-1997, § 205.0, 3-4-1997; Ord. No. 42-1997, 4-15-1997]~~

~~Whenever the Planning Board receives an application for a change, expansion or replacement of an existing legally nonconforming use, the Planning Board shall hold a public hearing before deciding on the application. At least 13 days prior to the hearing, the applicant shall give written notice of the nature of the application and the time and date of the public hearing to owners of land lying within a one-hundred-fifty-foot radius of the proposed expansion of the land on which the nonconforming use exists. It shall be the responsibility of the applicant to identify the owners of land entitled to notice under this section.~~

**Sec. 102-220 Fees.**

[Ord. No. 28-1997, § 206.0, 3-4-1997]

Fees for permits under this ~~a~~**Article** shall be established by the City Council. Fees shall be nonrefundable and shall be paid upon application for the permit.

**Sec. 102-221 Illegal lots.**

[Ord. No. 28-1997, § 207.0, 3-4-1997]

A lot created subsequent to the enactment of the ~~respective o~~**Ordinance** from which this ~~e~~**Chapter** is derived ~~which that~~ does not meet both ~~or either of the~~ **minimum lot frontage and minimum lot size** dimensional requirements ~~and acreage requirements~~ of this ~~e~~**Chapter** ~~for a~~ **respective zoning district** is declared to be illegal. Additionally, any lot previously created which was illegal when created due to the failure of such lot to meet ~~both or either of the~~ **minimum lot frontage and minimum lot size** dimensional requirements ~~or acreage~~

~~requirements~~ of the then-existing ~~e~~Ordinance **that was in effect** continues to remain an illegal lot. No permit shall be approved for an illegal lot.

**Sec. 102-222 Type 6, Nonconformity, Replacement of a ~~L~~egally ~~e~~Established ~~n~~Nonconforming ~~s~~Structure.**

[Ord. No. 28-1997, § 208.0, 3-4-1997]

**A Type 6 Nonconformity involves a request for a Permit to replace a legally established nonconforming structure.** The Planning Board may grant permission for the replacement of a **legally established nonconforming residential, nonresidential, or accessory** structure, provided **all of** the following criteria are met:

- (1) A nonconforming structure may be replaced within ~~one~~ **two** years of the structure being destroyed, removed or deemed unsafe by the ~~e~~Code ~~e~~Enforcement ~~e~~Officer. **;** **This standard means that an applicant/owner, within two years, has requested and obtained a Type 6 Permit from the Planning Board, has obtained a Building Permit, and has initiated substantial construction. The terms of the Building Permit shall govern the date by which construction of the replacement structure must be completed.**
- (2) The replacement **structure** shall ~~not~~ be located **wholly** on the **applicant's** property, **and none of the structure shall be located on property** owned by an abutter or within the limits of the road right-of-way. **;**
- (3) The replacement structure shall not constitute an expansion of a nonconforming use. **;** ~~and~~
- (4) The replacement structure shall not involve an increase ~~of a~~ **in any** nonconforming height of the structure being replaced.
- (5) **In proposing the location for a replacement structure within a nonconforming area, the applicant shall locate the replacement structure in the same or a similar location to the structure that is being replaced, unless the applicant can demonstrate to the satisfaction of the Planning Board that there is good cause to alter the location of the replacement structure. Good cause may include but is not specifically limited to factors such as the following:**
  - a. **topographic conditions (for example, grade of the property, stormwater management, and soil conditions);**
  - b. **preserving existing characteristics of the site (for example, existing trees and significant vegetation, and decreasing the need for significant soil removal);**
  - c. **reducing or not increasing the amount of negative impact on neighboring properties;**
  - d. **creating opportunities for the property/structure to come into greater compliance with City or state requirements (for example, Shoreland, Floodplain, or performance standards that apply to a specific use or zoning district); and**
  - e. **creating opportunities for overall site improvements, particularly improvements that may benefit the public health, safety, and welfare (for example, driveway access, traffic, and parking).**

An applicant for a Type 6 Permit shall be responsible for submitting a permit application that clearly identifies the following:

- a. the size and location of the former structure that is proposed to be replaced and other existing structures on the property;
- b. the amount of the former structure in the nonconforming area,
- c. the need to construct a replacement structure;
- d. the amount and location of the proposed replacement structure within the nonconforming area, and if the construction of the replacement structure involves any increase in size or height of the replacement structure;
- e. if applicable, that describes why the applicant is proposing to relocate the replacement structure;
- f. that identifies information regarding the location of structures on abutting properties that are located near the applicant's property lines, and
- g. that describes how the applicant believes the project complies with requirements of this Article.

An applicant, if requested by the Planning and Codes Department or the Planning Board, shall be required to prepare a property survey that addresses the above requirements.

**Sec. 102-223 Nonconformity Resulting from Governmental Action.**

[Ord. No. 12-2005, 8-3-2004]

Any structure, lot, or use of land that conforms to the provisions of this Article as of the effective date of adoption or amendment of the provision or requirement concerned, but is subsequently made nonconforming as to that provision or requirement as a result of a governmental action (including any municipal or state road project, property purchase, or eminent domain acquisition), shall be treated as a legally existing nonconformity as to that provision or requirement in accordance with this Chapter.

**Sec. 102-224. Type 7 Nonconformity, Amount of Lot Coverage.**

A Type 7 Nonconformity involves a request from a property owner to exceed the maximum amount of lot coverage that is permitted on a property in a respective zoning district; reference the Dimensional Standards Table for the respective type of use and zoning district. The following standards shall govern when the Planning Board may allow an increase in lot coverage that exceeds an identified standard.

- (a) **Type 7-1 Nonconformity.** A property that is used for a nonresidential use or a mixed use development that includes a nonresidential use, that was constructed and issued an initial occupancy permit prior to --- date of Council action ---, and that exceeds or is within five percent (5%) of the maximum lot coverage standard identified in the dimensional table for a respective zoning district, may increase the amount of lot coverage that existed on the property on --- date of Council action --- by a maximum of 10% (ten percent) of that amount of coverage over the life of a nonresidential use on the property. The property owner (applicant) shall be responsible for providing



evidence to the Planning Board that identifies the amount of lot coverage that existed on --- date of Council action ---, and how the applicant request complies with the requirements of this standard.

- (b) **Type 7-2 Nonconformity.** A property that is used for a single family, single family with detached accessory dwelling unit, or a duplex, and that was constructed and issued an initial occupancy permit prior to --- date of Council action ---, and that exceeds or was within 5% (five percent) of the maximum lot coverage standard identified in the Dimensional Table for a respective zoning district, may increase the amount of lot coverage that existed as of --- date of Council action --- by a maximum of ten percent (10%) of that amount of lot coverage over the life of the respective residential use on the property. The property owner (applicant) shall be responsible for providing evidence to the Planning Board that identifies the amount of lot coverage that existed on --- date of Council action ---, and how the applicant request complies with the requirements of this standard.
- (c) **Type 7-3 Nonconformity.** A property that is used for multi-family housing, and that was constructed and issued an initial occupancy permit prior to --- date of Council action ---, and that exceeds or was within 5% (five percent) of the maximum lot coverage standard identified in the Dimensional Table for a respective zoning district, may increase the amount of lot coverage that existed as of --- date of Council action --- by a maximum of 10% (ten percent) of that amount of coverage over the life of the multi-family use on the property. The property owner (applicant) shall be responsible for providing evidence to the Planning Board that identifies the amount of lot coverage that existed on --- date of Council action ---, and how the applicant request complies with the requirements of this standard.
- (d) If the property that is the subject of a Type 7-1, 7-2, or 7-3 Nonconformity request is located in a Shoreland District, the request must comply with applicable Shoreland requirements regarding lot coverage. A request to increase the amount of nonconforming lot coverage in a Shoreland District shall be subject to review pursuant to provisions in Chapter 82, Shoreland, and not the provisions in this Chapter.

**Sec. 102-225. Type 8 Nonconformity, Change of a Legally Established Nonconforming Use to a Another Nonconforming Use.**

Subject to approval by the Planning Board, a legally established nonconforming use may be changed to another nonconforming use that is deemed less or no more objectionable and detrimental than the existing legally established nonconforming use. A change of use is one that results in an activity that is different in nature and purpose compared to the original (current) nonconforming activity; that results in a difference in quality, character, degree, and kind of activity; and is different in kind regarding its effect on the neighborhood. Less or no more objectionable means that the Planning Board finds that new proposed nonconforming use will have a lesser effect or no greater effect on the neighborhood and on the property on which the use occurs; is less or no more noticeable than the current use; is closer in nature to the uses allowed in the respective zoning district; will result in a decline

**in the volume or intensity of the use; or that is equally or more appropriate for the zoning district.**

**The Planning Board will review an application for a change in nonconforming use in accordance with the following standards:**

- (a) The hours of operation are reasonably the same as the prior use or will not create any significant adverse impacts.**
- (b) Undesirable effects such as noise, glare, vibration, smoke, dust, odor, or fire hazard are decreased or not increased.**
- (c) Hazardous traffic conditions are minimized or not increased and the amount of traffic is decreased or not so substantially increased so as to create a detrimental impact on the neighboring area.**
- (d) The need for on-site or off-site parking remains similar to the former use.**
- (e) The appearance of the property from public ways and abutting properties is improved or unchanged, and the value of adjacent properties will not be unduly adversely affected by the new use.**
- (f) Unsanitary conditions as a result of sewage disposal, air emissions, or other aspects of the new use will not be created or will be improved upon compared to the former use.**
- (g) The applicant has taken reasonable measures to address current performance standards in Subpart B of the Code of Ordinances.**

**An applicant requesting a change of use must submit an application that identifies the location and condition of the existing property, including a site plan, and a narrative description of how the applicant believes the project satisfies the above standards that the Planning Board must consider.**

#### **Sec. 102-226. Planning Board Process for Review of a Nonconforming Application.**

**The Belfast Planning Board shall be responsible for the review of an application for a Nonconforming Permit, and shall use the following process to conduct its review and render a decision on a Permit. The Board has the authority to establish conditions on Permits it may issue.**

- a) The Planning Board shall conduct a public hearing on all requests for a Nonconforming Permit.**
- b) The Planning and Codes Department, on behalf of the Board, shall provide notice of the public hearing in the following manner:**
  - 1. In writing by first class mail a minimum of 13 calendar days prior to the public hearing to all owners of property that directly abut or that are located within 150 feet of any property line of the property for which a Permit is submitted. The Department shall keep a record of all persons to whom notice is sent.**
  - 2. By posting notice of the public hearing on the City of Belfast website and in Belfast City Hall (outside the Planning and Codes Office) a minimum of 13 calendar days prior to the public hearing.**

- c) The Board shall conduct its review of the application post the public hearing, shall determine if the application complies with applicable standards, shall render a decision on the permit and establish any conditions that it deems the applicant must satisfy, and shall issue written findings of fact to describe its decision.

**Sec. 102-227. Definitions specific to Article III.**

The following words, terms, and phrases shall have the meanings ascribed to them in this Section. The definitions in this Section apply specifically to the interpretation of standards identified in Article III, Nonconformance, and do not apply to other Articles in this Chapter.

*Enclosed structure.* An enclosed structure is a structure that has a roof, a floor, and three or more walls that together create an enclosed area.

*Habitable (usable) Area.* The habitable (usable) area of an enclosed structure is any area that is 5 feet or greater in height as measured from the floor to the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

*Open Structure.* An open structure is a raised or in-ground platform, either freestanding or attached to a building, that has no walls, but that may have a roof. An open structure has area, but it has no volume.

**Sec. 102-~~224~~ 228 through Sec. 102-250. (Reserved)**