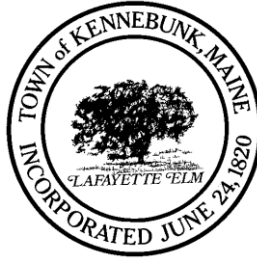


Town of Kennebunk, Maine

Christopher J. Osterrieder, P.E.
Director of Community
Development // Town Engineer



Lee Jay Feldman
Deputy Director of Community
Development

MEMO

To: Chair MacClinchy and the Members of the Kennebunk Planning Board

Cc: Lisa Pratt, Select Board Liaison; Bryan Laverriere, Town Manager

From: Community Development Department – Hannah Watson, Town Planner; Lee Jay Feldman, Deputy Director of Community Development; Christopher J. Osterrieder, P.E., Director of Community Development

Date: July 21, 2026

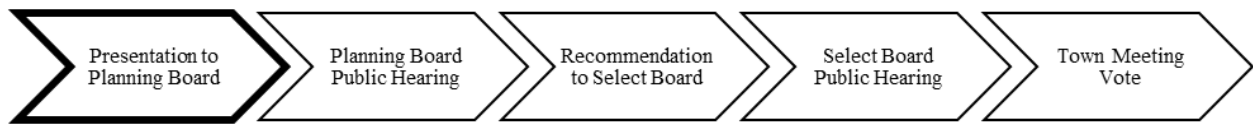
Re: Request for Zoning Ordinance Text Amendment to Article 5, Submitted by Walsh Engineering Associates

Overview of Proposal

Walsh Engineering Associates (WEA) has submitted ordinance amendment proposal on behalf of the [Kennebunk Beach Improvement Association](#) (KBIA) to amend Article 5 of the zoning ordinance to allow for the reconstruction of a nonconforming building without having to fully be conforming. Currently the ordinance, as interpreted would require that a nonconforming building that is intentionally demolished and proposed for reconstruction, must meet the dimensional requirements of the base zoning district.

If a nonconforming building is damaged or destroyed, the ordinance allows for the reconstruction of the building in the same or less than nonconforming manner. This proposed amendment would allow for a building to be reconstructed in a similar manner.

Zoning Amendment Process



Article 13, Section 1 of the Kennebunk Zoning Ordinance established the process for a zoning amendment. The applicant must have interest in the property that is the subject of the request and then make a submission of materials as outlined in Section 1 of Article 13. The application is reviewed for completeness and then placed on a Planning Board agenda.

The applicant will present the proposal to the Planning Board, and the Planning Board may request additional information or changes to the proposal. After the Board has deliberated and the applicant has provided any supplemental information to address concerns by the Planning Board, the Planning Board shall schedule and hold a public hearing to hear public comment. Within 30 days of the public hearing, the Planning Board shall by majority vote report in writing its findings and recommendations to the municipal officers (Select Board).

The Select Board at their sole discretion may send the proposed amendment or change to a Town Meeting. If there are substantive changes to the amendment, it must be returned to the Planning Board for its review and comment and another Public Hearing held prior to advancement to Town Meeting.

Current Ordinance Structure

Article 5 of the Zoning Ordinance governs nonconformities in the Shoreland Overlay, Resource Protection, and other base zoning districts. Two sections are most pertinent for this discussion:

- Article 5, Section 5 *Nonconforming Buildings or Structures*
- Article 5, Section 7 *Nonconformities in the Shoreland Zone*.

Article 5, Section 5.B(1) currently states:

Any nonconforming building, or a building containing a nonconforming use, which is hereafter damaged or destroyed by fire, flood, lightning, wind, structural failure or other accidental cause, may be restored or reconstructed in conformity with its original dimensions, and used as before, within three (3) years of the date of such damage or destruction; provided, however, that such reconstruction and use shall not be more

nonconforming than the prior nonconforming building or use. Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed.

Article 5, Section 7.C(3) currently states:

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Applicable Review Board in accordance with the purposes of this Ordinance.

The Code Enforcement Officers interpretation of Article 5 is that when a building is nonconforming as to the base zone's front, side, and/or rear yard setbacks, it may be reconstructed only if its damage or destruction was not intentional, and within 3 years of said occurrence.

When a building's nonconformity is only due to its location in relation to the shoreland zone setback, it may be reconstructed regardless of the cause of its destruction, and within 18 months of the destruction. When a building is nonconforming to shoreland and dimensional setback, the stricter standard prevails, which does not permit the reconstruction of a nonconforming building if the destruction is not unintentional.

Applicant Proposed Ordinance Amendment

The applicant, Kennebunk Beach Improvement Association (KBIA), requests a text amendment to Article 5, Section 5(B) to exclude the Resource Protection and Shoreland Overlay Districts from the restriction on reconstruction.

The proposed language is as follows:

B. Reconstruction (1) Any nonconforming building, or a building containing a nonconforming use, which is hereafter damaged or destroyed by fire, flood, lightning, wind, structural failure or other accidental cause, may be restored or reconstructed in conformity with its original dimensions, and used as before, within three (3) years of the date of such damage or destruction; provided, however, that such reconstruction and use shall not be more nonconforming than the prior nonconforming building or use. Nothing in this section shall prevent the demolition

of the remains of any building so damaged or destroyed. **This Section B does not apply to reconstruction of nonconforming buildings located partially or wholly within the Shoreland Overlay District or Resource Protection District, which shall be reviewed in accordance with the standards set forth in Section 7 of this Article 5 even if one or more nonconformities arise from base district standards.**

Staff Review of Proposed Ordinance Amendment

Completeness Review

This application has been reviewed for completeness in accordance with Article 13, Section 1.D of the Town of Kennebunk Zoning Ordinance. All required submission items have been met or are otherwise not applicable.

Consistency with the Comprehensive Plan

The applicant's request is consistent with the 2022 Comprehensive Plan. The Plan's Climate Change and Sea Level Rise chapter includes strategies dedicated to minimizing the negative consequences of climate change on municipal or privately owned infrastructure, property, and resources. Excluding the Resource Protection and Shoreland Overlay districts from Article 5, Section 5.B(1) provides greater flexibility for property owners to safeguard their properties from risk.

Shoreland Zoning/ Maine DEP Issues

The proposed amendment will not relax any standards of Shoreland Zoning and is not anticipated to require any regulatory approval by MaineDEP.

Code Officer Current Authority

The substance of Article 5, Section 9 grants authority to the Code Enforcement Officer to make a determination that changes to a nonconforming lot or building may occur if it is less nonconforming, thereby acknowledging that there are instances where not all nonconforming elements of a structure can be eliminated.

The exact language of Article 5 Section 9 includes:

"A nonconforming aspect of a lot or building may be changed if the Code Enforcement Officer determines that it is no more nonconforming than the existing situation."

It is expected that the proposed amendment would require the Code Enforcement Officer to make a similar determination as it pertains to a reconstruction proposal. The Planning

Board should consider whether this determination should remain as the responsibility of the Code Enforcement Officer, or if there is a higher level of review needed.

Legal counsel has advised that the objective of zoning is to also eliminate nonconforming situations whenever possible, so a higher level of review and determination by the Planning Board may be appropriate.

Alignment with other sections of the Zoning Ordinance

As proposed, this amendment would permit the demolition and reconstruction of a building in the Resource Protection or Shoreland Overlay districts, only subject to the standards set forth in Article 5, Section 7(C). Article 5, Section 7(C) only governs structures which are located less than the required setback from the resource (normal high-water line of a water body or tributary stream or the upland edge of a wetland). It does not consider nonconformities due to other dimensional standards, such as property line setbacks or lot coverage.

This means that a structure located in the Coastal Residential and Shoreland Overlay districts, which is not located within the shoreland setback but is nonconforming as to the side yard setback, would be permitted to demolish and reconstruct without restriction. Under the current version of Article 5, this same structure would only be permitted to be reconstructed if the destruction was unintentional or if the replacement structure conformed to the all setback requirements.

Implications of the Proposed Amendment

The Resource Protection district is a base zone and has both property line setbacks and resource setbacks. If governed solely under Article 5, Section 7(C), there would be no consideration for nonconformities to such property line setbacks.

Staff recognizes that the strict interpretation of Article 5, Section 5.B(1) and Article 5, Section 7(C) places restrictions on multiple properties, particularly those that have been recently mapped in a Special Flood Hazard Area as part as the Flood Insurance Rate Maps. However, excluding the Resource Protection and Shoreland Overlay districts from a standard that applies town-wide results in lesser restrictions for the more sensitive and vulnerable shoreland areas. While the proposal does afford the opportunity for buildings in need of reconstruction to have an avenue for approval, the Planning Board may want to consider the process by which this determination is arrived at to ensure appropriate safeguards are in place for sensitive environmental areas.