

LEGAL PRE-EXISTING STRUCTURE REQUIREMENTS

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Legal pre-existing structures, sometimes known as nonconforming structures, are structures that do not meet required setbacks from the water, lot lines or roads, but existed prior to the ordinance or amendments, thereof. Nonconforming structures are allowed to remain and are allowed ordinary maintenance and repair, such as replacement of same size windows and doors, skylights, vents, siding, insulation, shutters, gutters, flooring and shingles, or replacing or repairing internal walls and floors. Ordinary maintenance and repair does not include external alterations and additions, internal improvements or replacement of existing structures.

Replacement or expansion of these structures depends on several situations. This handout describes the options.

The first thing to determine is whether or not the structure is legal or illegal. The Rusk County Shoreland Zoning Ordinance was adopted in April 1971. If the structure (and all additions, etc) are older than April 1971, it is considered legal pre-existing. If the structure (or addition, deck etc.) has been built since April 1971, a permit would have been required and the structure must meet the ordinance requirements. If no permit was issued, the structure is considered illegal.

In addition, all other parts of the ordinance must still be met, including:

- The use of the structure must not have been discontinued for a period of 12 months or more if a nonconforming use.
- Septic system must be compliant. Sanitary Permit is required.
- Impervious Surface requirements must be met.
- Other applicable setbacks must be met – sideyard and road
- Township and UDC permits must be obtained
- Same “use” replacement means if area was living quarters, it can be replaced with living quarters, if area was a deck, it can be replaced with a deck.
- Expansion of a structure can never increase it’s nonconformity
- Buildings in floodplain must meet floodplain requirements

Principal structure means a non-portable structure which is designed for independent human habitation and includes sanitary and/or food preparation facilities whether such structure is attached to another structure(s) or stands alone. If more than one structure that meets this definition exists on a single lot, the smaller structure(s) shall be considered accessory.

Accessory structure or use means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related, and which is located on the same lot as the principal structure or use.

The table below and on the back side describes the ordinance requirements for the different types of structures and what is permitted.

	Replace/Repair/ Restore/Rebuild	Vertically Expand (up and/or down)	Laterally Expand Existing Structure	Rebuild outside of footprint at less than allowed OHWM setback
Principal Structure <35' from OHWM	Yes, same footprint, use and location	Yes, same footprint, use and location – 35' height limit	No	No – must meet new building requirements

	Replace/Repair/Restore/Rebuild	Vertically Expand (up and/or down)	Laterally Expand Existing Structure	Rebuild outside of footprint at less than allowed OHWM setback
Principal Structure >35' from OHWM	Yes, same footprint, use and location	Yes, same footprint, use and location. 35' height limit	Yes (if not a replaced structure) – 200 sq ft max if within 75' (requires mitigation) Unlimited expansion beyond 75' – no mitigation	Yes – requires mitigation. Section 50.192(c)(3)e.
Principal Structure >75' from water but doesn't meet other setbacks	Can replace up to 50% of structural members of the existing wall perimeter	Yes – must meet the 50% limit – 35' height limit	Yes – must meet 50% limit	No – must meet new building requirements
Principal or Accessory Structure in a Comprehensively Zoned area that has been damaged by "Act of God"	Yes, same size, use and location	No	No	No – must meet new building requirements
Principal or Accessory Structure >75' from water but doesn't meet other setbacks in Comprehensively Zoned area	Can replace up to 50% of structural members of the existing wall perimeter	Yes – must meet the 50% limit – 35' height limit	Yes- up to 50% of its existing square footage	No – must meet new building requirements
Exempt Accessory Structure (i.e. boathouse)	Yes, same footprint, use and location	No	No	No – must meet new building requirements
Accessory structure <75' from the OHWM	Yes, same footprint, use and location	Yes, same footprint, use and location	No	No – must meet new building requirements
Accessory Structure >75' from the water but doesn't meet other setbacks	No	No	No	No – must meet new building requirements
Illegal Structures >10 years old in shoreland zoned area	Yes, same footprint, location and use	No	No	No – must meet new building requirements