

ARTICLE VI. - NONCONFORMING STATUS

Sec. 34-1352. - Intent.

Within the zoning districts established by this chapter or amendments adopted subsequent thereto, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful prior to the adoption of this chapter or amendment thereto, but which would be prohibited, regulated, or restricted under the terms of this chapter or any subsequent amendment. It is the intent of this article to allow these nonconformities to continue, without increase in degree of nonconformity, until they are removed under the terms of this chapter.

(Ord. No. 207, § 7.10, 8-8-1979)

Sec. 34-1353. - Rights.

To avoid undue hardship, nothing in this chapter shall be deemed to require change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of the ordinance from which this chapter is derived and upon which actual building construction has been carried on diligently. The term "actual construction" is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner pursuant to a building permit issued and unexpired at the adoption of the ordinance from which this chapter is derived. Where permitted demolition or removal of any existing building has been substantially begun in preparation to rebuild, such demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

(Ord. No. 207, § 7.20, 8-8-1979)

Sec. 34-1354. - Nonconforming lots of record.

- (a) In any district where permitted, a single-family detached dwelling and customary accessory building may be erected on any single nonconforming lot of record at the effective date of adoption or amendment of the ordinance from which this chapter is derived, notwithstanding limitations imposed by other provisions of this chapter. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and requirements

other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the board of adjustment. No lot presently classified nonconforming under any previous zoning ordinance shall be declared a conforming lot under the provision of this chapter unless or until such lot meets the minimum requirements set forth herein and as applied in the district in which such lot is located. Any permitted use in the applicable district may be constructed on any existing nonconforming lot at the time of adoption of the ordinance from which this chapter is derived in any district if said lot is less than the minimum building site area required for building lots in the district in which it is located provided, however, that the structure complies with all other area requirements of this chapter and provided further that the owner of said lot does not own any adjacent vacant land which would create a conforming lot if said vacant land were combined with the lot deficient in area.

- (b) Except as herein provided, if two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter, and if all or part of the lots do not meet the requirements established for lot width and area, the subject lots involved shall be considered to be an undivided lot for the purpose of complying with site development regulations of this chapter, and no portion of said lot shall be used or sold in a manner which diminishes the degree of compliance with lot width and area requirements established by this chapter, nor shall any division of any lot be made which creates a lot with a width or area below the requirements stated in this chapter, except as provided in section 34-1355.

(Ord. No. 207, § 7.30, 8-8-1979)

Sec. 34-1355. - Land with nonconforming uses.

Nonconforming uses are declared by this chapter as those which are existing at the time of the passage of the ordinance from which this chapter is derived or amendment thereto, which are prohibited, or incompatible to, and inconsistent with the permitted uses set forth within any particular zoning district. Although such uses do not conform to the provisions of this chapter or the particular zoning district within which the use may be located, such uses may continue subject to the following limitations and restrictions:

- (1) *Change of use.* A change from a nonconforming use to another nonconforming use which is not a continuation of the original nonconforming use which existed at the effective date of the ordinance from which this chapter is derived is prohibited.
- (2) *Change in volume or intensity of use.* A change that results in the increase of density or intensity of the use which existed at the effective date of the ordinance from which this chapter is derived is hereby prohibited.
- (3)

Change in location of use. No such nonconforming use shall be moved in whole or in part to any other portion of the lot, parcel, or site which was occupied by such use on the effective date of the ordinance from which this chapter is derived.

- (4) *Change of ownership or tenancy.* All rights and obligations associated with a nonconforming use of land run with the land and are not personal to the present owner, tenant, or proprietor of the nonconforming use and are not affected by a change in ownership or tenancy.
- (5) *Increase, extension, or enlargement of use.* A nonconforming use shall not be increased, extended, or enlarged in a way that increases its nonconformity or occupies a greater area of land than was occupied on the adoption date of the ordinance from which this chapter is derived or in any manner which increases its noncompliance with the use regulations of this chapter. An expansion of any impervious ground surface of any building or structure shall be deemed to be an increase, extension, or enlargement as specified herein.
- (6) *Repairs and maintenance.* Routine repairs and maintenance of buildings and structures which house or contain nonconforming uses necessary to maintain health and safety may be permitted.
- (7) *Additions and expansions of facilities.* Additions to or expansions of facilities within or which house a nonconforming use shall not be permitted.
- (8) *Replacement or restoration of use—Generally.* In the event that any existing nonconforming use is located in a building or structure which is damaged by any means other than fire, flood, wind, explosion, act of God, or act of a public enemy, to an extent of 50 percent or more of the total cost to reconstruct the structure to the latest building codes, as determined by an appraiser acceptable to the town, it shall not be replaced, restored, or reconstructed except in conformance with the provisions of this chapter. If the damage is to an extent less than 50 percent it may be replaced or restored as described in subsection (9) of this section.
- (9) *Same—Exceptions.* In the event that any existing nonconforming residential use, other than those located within the coastal high hazard area, is located in a building or structure which is damaged by fire, flood, wind, explosion, act of God, or act of a public enemy, it shall be allowed to be replaced, restored or reconstructed to the density or intensity of use and building site area characteristics that existed prior to destruction. Actual construction to replace, restore, or reconstruct the use shall commence within two years from the date of destruction, or the nonconforming status of the use shall lapse, and said use shall revert to

normal nonconforming status regulation and requirements of this chapter. One extension to the two-year period of continuing nonconforming density or intensity of use status, said extension not to exceed one year, may be requested prior to the expiration of the two-year period. Such request for extension shall be heard and decided by the board of adjustment.

- (10) *New services or activities.* No new services or activities shall be permitted in an existing nonconforming use as provided for in this article.
- (11) *Abandonment or discontinuance of use.* The abandonment or discontinuance of a nonconforming use for a period of time which exceeds six months shall immediately render the nonconforming use status of the specific nonconforming use null and void. The continuance of said use after said period is specifically prohibited, and any subsequent use shall fully conform to the regulations specified by this chapter for the zoning district in which such use is located.

(Ord. No. 207, § 7.40, 8-8-1979)

Sec. 34-1356. - Nonconforming building and structures.

Nonconforming buildings and structures are declared by this chapter as those which are existing at the time of the passage of this chapter or amendment thereto, which do not conform to the regulations of area, height, lot coverage, or other requirements of the district in which such building or structure is located. Although such buildings or structures do not conform to the provisions of this chapter or the particular zoning district within which the building or structure may be located, such buildings or structures may continue subject to the following limitations and restrictions:

- (1) *Increase, extension, expansion, or enlargement.* A nonconforming structure shall not be increased, extended, expanded, or enlarged in a way which increases or extends its nonconformity. Therefore, a nonconforming structure shall be permitted to expand its first floor structural footprint so long as:
 - a. The structure is expanded into a conforming front, side, or rear yard setback; and
 - b. All other regulations of the zoning district are complied with (except the dimensional lot area requirements of the zoning district in which it is located). However, an addition to a nonconforming structure, above the first floor level, is permitted to match an existing, nonconforming first floor footprint. Any building or structure or portion thereof, may be altered to decrease its nonconformity.
- (2) *Replacement, restoration, or reconstruction.*
 - a.

Generally. In the event that any existing nonconforming building or structure is damaged by any means, other than fire, flood, wind, explosion, act of God, or act of a public enemy to an extent of 50 percent or more of the total cost to reconstruct the structure to the latest building codes, as determined by an appraiser acceptable to the town, it shall not be replaced, restored, or reconstructed except in conformance with the provisions of this chapter. If the damages is to an extent less than 50 percent, it may be replaced, restored, or reconstructed as described in subsection (2)b of this section. Any building or structure which remains damaged or disrepaired, regardless of the percentage of construction (or damage) value or area of square footage which is damaged, for a period of six months following the date of damage without the issuance of a valid building permit, shall not be replaced, restored, or reconstructed unless it is brought into full compliance with the provisions of this chapter.

b. *Exceptions.* In the event that any existing nonconforming residential building or structure, other than those located within the coastal high hazard area, is damaged by fire, flood, wind, explosion, act of God, or act of a public enemy, it shall be allowed to be replaced, restored or reconstructed to previously existing building site area characteristics. Actual construction to replace, restore or reconstruct the development, shall commence within two years from the date of destruction, or said status shall be relinquished and said development would revert back to normal nonconforming status regulations and requirements of this chapter. One extension to the two-year period of continuing nonconforming building and structure status, said extension not to exceed one year, may be requested prior to the expiration of the two-year period. Such request for extension shall be heard and decided by the board of adjustment.

(3) *Repairs and maintenance.* Routine repairs and maintenance of nonconforming buildings and structures necessary to maintain health and safety may be permitted.

(4) *Change in location.* Should any nonconforming buildings or structure be moved for any reason for any distance whatever from its original permitted location, it shall thereafter conform to the property development regulations for the zoning district in which it is located after it is moved.

(Ord. No. 207, § 7.50, 8-8-1979)

Sec. 34-1357. - Nonconforming characteristics of use.

If characteristics of use such as but not limited to parking, loading, and landscaping are made nonconforming by this chapter as passed or amended, no change shall be made in such characteristics of use which increases its nonconformity. However, routine repairs and maintenance of nonconforming characteristics of use may be permitted. Said repairs and maintenance shall include such activities as resurfacing of parking

lots and driveways, and replacement of damaged or destroyed landscape materials. Any nonconforming characteristics of use, or portion thereof, may be altered to decrease its nonconformity.

(Ord. No. 207, § 7.60, 8-8-1979)

Sec. 34-1358. - Savings clause.

Notwithstanding anything in this chapter to the contrary, any use or structure which was:

- (1) Discontinued or abandoned for six consecutive months or for 12 months during any four-year period (except where government action impedes access to the premises) between August 8, 1979, and the effective date of the ordinance from which this chapter is derived; or
- (2) Was destroyed to an extent of more than 50 percent of its assessed value at time of destruction between August 8, 1979, and the effective date of the ordinance from which this chapter is derived;

shall not be used, replaced, restored or reconstructed unless it is brought into full compliance with the provisions of this chapter.

(Ord. No. 207, § 7.70, 8-8-1979)

Sec. 34-1359. - Repairs, maintenance, and improvements.

- (a) On any nonconforming structure or portion of such structure, work may be done on ordinary repairs, maintenance or improvements provided:
 - (1) That the extent of the nonconforming aspect of the structure or portion shall not be increased; and
 - (2) That these provisions shall apply only where deterioration is not to an extent of 50 percent or more of assessed valuation of the structure or portion.
- (b) Nothing contained herein shall prevent the strengthening or restoring to safe condition of a nonconforming structure or portion thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official, provided that such repairs are made within one year of initial notice.

(Ord. No. 207, § 7.80, 8-8-1979)

Sec. 34-1360. - Required area or space cannot be reduced.

The area or dimension of any lot, yard, parking area or other space shall not be reduced to less than the minimum required by this chapter except as provided in this chapter; and, if already less than the minimum required by this chapter, said area or dimension may be continued but shall not be further reduced except as provided by this chapter.

(Ord. No. 207, § 7.90, 8-8-1979)