

## ARTICLE 8. NONCONFORMING USES

### Section 8-1. Existing Nonconforming Use May Be Continued

Except as otherwise provided herein, the lawful use of land or buildings existing at the effective date of this article may be continued although such use of building does not conform to the provisions hereof. Except as provided in this article, such existing nonconforming use or building may not be enlarged, extended, reconstructed or structurally altered except in compliance with the provisions of this article. However, nothing in this article shall be deemed to prevent the repair, strengthening or restoring to a safe condition any part of a building or structure in accord with applicable town codes.

### Section 8-2. Existing Lots of Record

Were a lot of record at the time of the effective date of this article has less area or width than herein required in the district in which it is located, said lot may nevertheless be approved for use by the zoning administrator for any use permitted within the district in which it is located, provided all other dimensional requirements of the article shall be met. Any required variance shall be submitted to the zoning board of adjustment.

### Section 8-3. Change of Use

If a change from one nonconforming use to another is proposed and no structural alterations are involved, the change may be permitted, provided:

- (1) The total amount of nonconforming space shall not be increased;
- (2) Greater nonconformity of dimensional restrictions such as height, density, setbacks, or other requirements such as off-street parking shall not be increased; and
- (3) The proposed use will have less of an adverse impact and will be more compatible with surrounding property than the current or previous nonconforming use.

Whenever a nonconforming use of land or building has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed back to a less restricted or nonconforming use.

### Section 8-4. Replacement of Nonconforming Use, Building, or Structure

- (1) A nonconforming building, structure or use shall not be reestablished, reoccupied or replaced with the same or similar building, structure or use after physical removal or relocation from its specific site location at the time of passage of this article.
- (2) The provisions shall not apply to the reconstruction, repair, or reestablishment of the following:
  - (a) Single-family structure used as single-family dwelling, including single-family structures and patio homes.
  - (b) A multifamily structure within a group development of two(2) or more multifamily structures where seventy-five (75) percent of the total group development has not been damaged.

- (c) A structure containing townhouses dwellings within a group development of two (2) or more such structured where seventy-five (75) percent of the total group development has not been damaged.
- (d) Any existing commercial building can be rebuilt in its entirety. Stormwater controls shall be Subject to(Session Law 2008-2011: Senate Bill 1967:Section 2.(d) Exclusions; (3) Redevelopment activities that result in no net increase in built upon area and provide stormwater control equal to the previous development).

Such structures may be repaired, rebuilt, altered or reestablished provided there is not an increase in the amount of land occupied by the structure, the height of the structure is not increased, the density is not increased, and other nonconformities are not created.

#### **Section 8-5. Extension of Use Within Existing Building and Expansion of Space**

The nonconforming use of a building may be hereafter extended throughout those parts of a building which were primarily arranged or designed for such use at the time of the enactment of this article and nonconforming single-family residences may expand floor area subject to the development standards of the district in which they are located.

#### **Section 8-6. Extension or Enlargement of a Nonconforming Use or Building**

- (1) Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of any nonconforming use or building. In particular, physical alteration of structures or the placement of new structures is unlawful if such results in:
  - (a) An increase in the total amount of space devoted to a nonconforming use, except as provided in Section 5; or
  - (b) Greater nonconformity with respect to dimensional restrictions such as setback, height, density, or other requirements such as parking requirements.
- (2) Subject to the restrictions of subsection 6-1, physical alterations of existing structures or the placement of new structures shall be allowed pursuant to the following
  - (a) Expansions, alterations, or new construction resulting in an increase of less than twenty (20) percent of the total existing gross floor area.
  - (b) Expansions, alterations, or new construction resulting in an increase of twenty (20) percent or greater in the total existing gross floor area,

provided all applicable site requirements of this article complied with.

NOTE: Site requirements as used in section 8-6(1)(b) are defined as parking, landscaping and signage. For the purpose of allowing development flexibility for expansions to existing buildings, the following shall be allowed:

- (1) Existing unpaved parking spaces located seaward of the building control line may be allowed to remain unpaved and count as required parking.
- (2) In order to protect the intent of this article, it shall be unlawful to issue a permit for the expansion of a nonconforming structure that has previously expanded up to twenty (20) percent in gross floor area under the terms of this article, unless the requirements of subsection 8-6(1)(b) are complied with.

### **Section 8-7 Discontinuance or abandonment of Nonconforming Use.**

When the exception of residential uses, no nonconforming land use be reused except in conformity with applicable district regulations if discontinued or allowed to remain idle for a period of twelve (12) months. Extensions may be granted on appeal to the zoning board of adjustment.

### **Section 8-8 Intermittent Use.**

The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use.