

## **ARTICLE VIII. NONCONFORMING SITUATIONS**

### **Section 87: Application and Intent**

This Article applies to existing lots, structures, or uses of land or structures which were legal prior to the effective date or amendment of this ordinance but which do not or would not conform to regulations and restrictions under the terms of this ordinance or future ordinance amendments. Except as expressly permitted by this article, nonconformities shall not be enlarged, expanded or extended, or be used as the basis for adding other structures or uses prohibited elsewhere in the same district.

### **Section 88: Completion of Nonconforming Projects**

All nonconforming projects for which a permit was issued legally, and actual construction was begun before the effective date or amendment of this ordinance, and upon which actual building construction is carried on diligently until completion, may be completed in accordance with the terms of their permits, so long as the permits were validly issued and remain unrevoked and unexpired. Actual construction is defined as the placing of construction materials in permanent position, fastened in a permanent manner. Where excavation, demolition or removal of an existing building has been substantially begun prior to rebuilding, such excavation, demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently.

### **Section 89: Nonconforming Lots of Record**

In any district, permitted structures may be constructed or enlarged on any single nonconforming lot of record, notwithstanding limitations imposed by other provisions of this ordinance. Such nonconforming lot shall have lot access as required by Section 13. The lot may be used for a single family detached dwelling in any residential district and any permitted use within any non-residential district provided setbacks, side and rear yard requirements are met. Any lot that is less than 80 percent of the required area or width may be used for a single family detached dwelling within any residential district and any permitted use within any non-residential district; provided, however, that the required side yards shall not be reduced to less than ten percent of the lot width or five feet, whichever is greater, and all other applicable ordinance requirements are met.

### **Section 90: Prohibition Against Creation of Other Lots Below Width and Area Requirements for District**

No lot, parcel or portion thereof shall be used or sold in a manner which decreases compliance with lot width and area requirements established by this ordinance, nor shall any division be made which creates lot area or width below the minimum requirements imposed by this ordinance.

**Section 91: Highway Realignment or Condemnation**

Any lot which, because of the realignment of a Federal or State highway or because of condemnation proceedings, has been reduced in size to an area less than that required by this ordinance, shall be considered a nonconforming lot of record subject to the provisions of Section 89; and any legal use or structure existing at the time of such highway realignment or condemnation proceedings which would no longer be permitted by this ordinance shall be considered a nonconforming use or structure.

**Section 92: Nonconforming Uses of Land and/or Structures**

Nonconforming situations that were otherwise legal on the effective date of this ordinance may be continued provided:

- (a) No nonconforming use (structure and/or activity) shall be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date or amendment of this ordinance unless the enlargement, increase or extension does not result in an increase in nonconformity.
- (b) No nonconforming use and/or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use and/or structure on the effective date or amendment of this ordinance unless the move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district.
- (c) No additional nonconforming structures shall be constructed in connection with any nonconforming use of land. No additional uses which would be prohibited generally in the zoning district involved shall be permitted.
- (d) A use that is accessory or incidental to a permitted principal use cannot be made the basis for a nonconforming principal use.
- (e) A nonconforming use may be extended throughout any portion of a building that was manifestly arranged or designed to accommodate such use at the time of adoption or amendment of this ordinance. However, no such use shall be extended to additional buildings or to land outside the original building.
- (f) If no structural alterations are made, any nonconforming use of a structure, or structure and land, may, as a special exception, be changed to another, more restricted nonconforming use provided that the planning commission, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. The planning commission may require appropriate conditions and safeguards in accord with the provisions of this ordinance when permitting such change.

- (g) When any nonconforming use, lot, or structure and use in any combination, is replaced by a permitted use or structure, the use shall thereafter conform to the regulations for the zoning district, and no nonconforming use and/or structure shall be reestablished.
- (h) A nonconforming use may continue regardless of any change in title or possession or renewal of any lease for the lot or structure. Subject to the provisions of subparagraph (9) below, nonconforming structures may be restored if damaged or destroyed; however, any expansion of the original structure must conform to the requirements of this ordinance.
- (i) If any nonconforming use (structure or activity) is discontinued for more than two years after the effective date of this ordinance it shall be deemed abandoned and any subsequent use of such land, building or structure shall conform to the regulations contained in this ordinance for the zoning district in which the land is located.

**Section 93: Repairs and Maintenance**

- (a) On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of walls, fixtures, wiring, or plumbing, provided that the square footage existing when it became nonconforming shall not be increased. If a nonconforming structure or portion of a structure, or a structure or portion of a structure containing a non-conforming use, becomes physically unsafe or illegal due to lack of repair and maintenance, and is declared by any duly authorized official to be unsafe or illegal by reason of physical condition, it may thereafter be restored, repaired, rebuilt or used in accordance with the prior nonconformity provided that the square footage existing when it became nonconforming shall not be increased.
- (b) Nothing in this ordinance shall be deemed to prevent strengthening or restoring to a safe condition any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**Section 94: Uses Under Special Exception Provisions not Nonconforming Uses**

Any use which is permissible as a special exception in the applicable zoning district under the terms of this ordinance (other than a change from one nonconforming use to another approved by the planning commission) shall be considered a conforming use if lawfully commenced and continued on the effective date of this ordinance.

**Section 95: Verification of Nonconforming Uses**

- (a) The lawful status of a nonconforming use shall be verified by the zoning administrator prior to any change in the use. The administrator may also verify the lawful status of a nonconforming use not proposed to change, upon request of the owner of the property on which the use is located, or upon the request of a neighboring property owner.
- (b) The administrator shall determine the following when verifying the lawful status of a nonconforming use:
  - (1) Whether the use is in fact a lawful nonconforming use as defined by this ordinance; and, if so, then
  - (2) The location and gross floor area (in square feet) of all buildings associated with the nonconforming use; and
  - (3) The location, use and size of all structures other than buildings associated with the nonconforming use; and
  - (4) The land area (in square feet) devoted to all aspects of the nonconforming use (including, but not limited to, buildings, parking, outside storage, travelways, and open spaces); and
  - (5) A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.
- (c) The zoning administrator shall classify the overall nonconforming use based on the zoning district in which the use would be a permitted use if the administrator verifies that the use of any portion is a lawful nonconforming use. The assigned classification shall be based on the zoning district that is the least intense of all districts where the use would be permitted if the use would be permitted in more than one district. The assignment of such a zoning classification shall not operate to change the zoning of the property on which the nonconforming uses is located, but shall be used only in determining the applicable criteria for change of the nonconforming use under Section 92 of this ordinance.
- (d) The decision of the administrator under subsections (a) and (b) shall be final after 30 days, unless an appeal is filed to the board of zoning appeals in accordance with Section 43 of this ordinance.
- (e) The decision of the administrator shall be based on information provided by the owner of the property on which the nonconforming use is located, information provided by other persons with knowledge of the property, and any other information available to the administrator as public record. Such information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property on which the use is located.

- (f) The administrator shall keep a record of all verified nonconforming uses. The owner or operator of a verified nonconforming use shall file a report with the administrator not less than two years after the original date of verification, on forms available from the town office, showing that the nonconforming use has not ceased for a two-year period, or been abandoned, and that the use is being operated in accordance with the decision rendered as part of the nonconforming use verification process, and any subsequent changes approved.

**Sections 96 through 100: Reserved**