

## **ARTICLE VI NONCONFORMING USES, LOTS AND BUILDINGS**

### **Section 6.01 Intent**

- (A) This Article describes the status of land, structures and/or the uses of land or structures which were lawful before these regulations were passed or amended, but which have become prohibited, restricted or substandard. While permitting non-conforming uses and structures to continue, this Article is intended to limit the enlargement, alteration, restoration or replacement of non-conforming uses and/or structures, in order to limit the discrepancy between existing conditions and the development standards contained in this Ordinance.
- (B) The intent and purpose of this Article is to establish regulations for the continuance, maintenance, repair, restoration, moving and discontinuance of nonconforming lots, structures, land and uses, in order to accomplish following objectives:
- (1) To permit nonconforming uses or lots to continue until they are removed, but not to encourage their survival, and to minimize any adverse effect on the adjoining properties and developments.
  - (2) To regulate their maintenance and repair.
  - (3) To restrict their rebuilding if substantially destroyed.
  - (4) To require their permanent discontinuance if not operated for a period of 12 months.
  - (5) To require conformity if they are discontinued, to bring about eventual conformity in accordance with the objectives of the Town's Comprehensive Plan and this Ordinance.

### **Section 6.02 Continuance of Use**

Except as otherwise provided herein, any lawfully established use of a building or land existing at the time of the enactment of this Ordinance, or amendments thereto, may be continued even though such use does not conform with the provisions of this Ordinance. However, no unlawful building, structure, lot or land or unlawful use of a building, structures, or lot existing at the effective date of this Ordinance or any amendment thereto shall be deemed to be a nonconforming building, structure, lot, or use.

### **Section 6.03 Discontinuance of Use / Abandonment**

- (A) Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of this Ordinance, such premises shall not thereafter be used or occupied by a nonconforming use.

- (B) Whenever a nonconforming use of a building or structure, lot, or part thereof, has been discontinued, for any reason or cause, for a period of twelve consecutive months, such use shall be deemed to have been abandoned and shall not be re-established, and the use of the premises thereafter shall be in conformity with the regulations of the zoning district in which it is located.

### **Section 6.04 Change of Use**

- (A) A nonconforming use shall not be changed unless it is changed to a conforming use. If the use is changed to a conforming use, it may not be thereafter changed back to any nonconforming use.
- (B) Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the District in which it is located after it is moved.

### **Section 6.05 Repairs and Alterations**

- (A) Normal maintenance of a nonconforming building or structure is permitted.
- (B) Unless changed to a conforming use, a building or structure that is used for a non-conforming use may not be reconstructed or structurally altered to an extent exceeding in aggregate cost fifty (50) percent of the market value of the building. For purposes of this section, the market value of the building shall be determined by dividing the assessed value by the equalization rate. If reconstruction or improvement is permitted pursuant to this subsection, there shall be a five year wait period before any property owner can again reconstruct or make a substantial improvement, unless the building is changed to a conforming use.
- (C) A building or structure that is used for a conforming use, but that does not meet the dimensional requirements of Section 4.03, Schedule B and elsewhere this Ordinance, may not be expanded, if by such expansion the setbacks or other dimensional requirements would become more non-conforming, unless an area variance for such expansion is granted by the Zoning Board of Appeals.
- (D) **Manufactured / Mobile Home Replacement.** In any zoning district, an existing mobile or manufactured home, which does not conform to the standards in Section 5.08 of this Ordinance, may be replaced with another non-conforming home, provided that the replacement home is the same size or larger than the home that is being replaced and that the replacement home conforms to all standards in the current Building Code.

### **Section 6.06 Extensions and Enlargements**

A nonconforming use shall not be enlarged or extended, except as follows:

- (A) No nonconforming uses shall be extended or enlarged, nor increased to occupy a greater area of land than was occupied at the effective date of the adoption of this Ordinance. However, the extension of a conforming use to any portion of a building used for a nonconforming use, which existed prior to the enactment of this Ordinance, shall not be deemed the extension of such nonconforming use.
- (B) A nonconforming use shall not be extended or enlarged to displace a conforming use under any circumstances.
- (C) A structure, use or occupancy existing lawfully at the time this Ordinance or any amendment thereto becomes effective, but which does not conform with the off-street parking, loading, stacking and landscaping regulations, may be occupied or continued without such parking, loading, stacking and landscaping, subject to the other provisions of this Article.

### **Section 6.07 Restoration**

- (A) A nonconforming building or structure damaged by fire, flood or any other means may be repaired, rebuilt, restored, reconstructed, or rehabilitated, without enlargement. A building permit to repair the damaged structure must be obtained within one year of the damage to the structure and the repairs must be completed within one year from the date of issuance of the building permit, or the nonconforming status of the use or structure shall be deemed to be terminated.
- (B) A damaged nonconforming structure shall not be enlarged, unless the non-conformity is removed and the remodeled and/or rebuilt structure conforms to all requirements of the Zoning Ordinance.

### **Section 6.08 Prior Approval of Permits and Variances**

Nothing contained in this Ordinance shall require any change in plans or prevent the construction of a building or other structure for which a building permit was lawfully issued and which later was made nonconforming by adoption of this Ordinance or subsequent amendments thereto, provided that either:

- (A) The construction shall have commenced prior to the nonconforming date and construction thereafter is diligently continued and is entirely completed within one (1) year from the date of the passage of this Ordinance or the amendment thereto.
- (B) The Zoning Board of Appeals makes a finding that substantial expenditures have been made or substantial financial obligations have been incurred for such nonconforming building or structure prior to the date of the adoption of this Ordinance or the amendment that resulted in the structure or use becoming non-conforming.