

Article VI: Nonconformities

5.31 Purpose Statement

It is the intent of this Article VI to recognize that the eventual elimination, as expeditiously as is reasonable, of existing uses or *structures* that are not in conformity with the provisions of this chapter is as much a subject of health, safety, and welfare as is the prevention of the establishment of new uses that would violate the provisions of this chapter. It is also the intent of this Article VI that any elimination of *nonconforming uses* or *nonconforming structures* shall be effected so as to avoid any unreasonable invasion of established private property rights.

5.32 General Standards

5.32.1 Nonconforming Use

A *nonconforming use* may be continued and shall be maintained in good condition, but it shall not be:

- A. Changed to another non-conforming use, except, after approval of the Zoning Board of Appeals. When granting such approval, the Zoning Board of Appeals shall determine that such change in use will have a less detrimental effect on neighboring property than the existing non-conforming use.
- B. Structurally altered so as to prolong the life of the *building*.
- C. Expanded or increased in intensity of use (for example, such as by the addition of one or more *dwelling units*, by providing additional Manufacturing or selling area, or the addition of facilities that would allow the establishment of another use or other uses).
- D. Re-established after discontinuance for a period of at least one year.
- E. Re-established in cases of residential usage in any "R" dwelling district after damage or destruction of the *building* or *structure* devoted to such non-conforming use if the estimated expense of reconstruction exceeds 70% of the appraised replacement cost (as determined by the Building Official) of the entire *building* or *structure* exclusive of foundations, prior to its damage or destruction. In cases of other than residential usage in any "R" dwelling district, the limitation on the expense of reconstruction shall be 50% of such appraised replacement cost.
- F. Re-established in any zoning district other than an "R" dwelling district except under the same provisions as in Subsection A.5 above, providing that the limitation on the expense of reconstruction shall be 70% rather than 50% of the

appraised replacement cost (as determined by the Building Official) of the entire *building* or *structure* exclusive of foundations prior to its damage or destruction.

5.32.2 Nonconforming Structure

A *nonconforming structure* may be maintained or restored, but no *alteration* shall be made to a *nonconforming structure* unless one of the following conditions is met:

- A. Alterations to nonresidential *nonconforming structures*. The *alteration* is approved by the Zoning Board of Appeals upon a finding that it complies as nearly as practical with the requirements of this chapter and that it will not have a detrimental effect on neighboring property.
- B. Alterations to residential *nonconforming structures*. The *alteration* may expand into a required setback with approval by the Planning Manager subject to the following standards:
 1. The alteration does not extend closer to the lot line than any existing, nonconforming part of the structure.
 2. The alteration does not create a new nonconformity on the lot or an adjacent lot.
 3. The alteration maintains compliance with all other required setbacks, dimensional standards, and height requirements of the zoning district in which the lot is located.
- C. For purposes of this Section 0, *alteration* shall mean any change in a *building* that results in, a greater number of *dwelling units* -, or an increase in the exterior dimensions of the *building*.
- D. A *nonconforming structure* shall not be replaced after damage or destruction of the *nonconforming structure* if the estimated expense of reconstruction exceeds 75% of the appraised value, as determined by the Building Official, of the entire *building* or *structure*, exclusive of foundations.

5.32.3 Nonconforming Lot

Where the owner of a *nonconforming lot* does not own and cannot reasonably acquire sufficient land to enable the owner to conform to the requirements of this chapter regarding *lot area*, *lot width*, or both, such a *nonconforming lot* may be used by such an owner under the following conditions.

- A. Permitted Use
 1. A *nonconforming lot* in a Single-Family or Two-Family Residential District may be used for *single-family* use.
 1. A *nonconforming lot* in a Multiple-Family Residential District may be used for *single-family* use.
 2. A *nonconforming lot* in a Mixed-Use Zoning District may be used for any permitted *principal use* in the O district.
 3. A *nonconforming lot* a Nonresidential or Special Purpose Zoning District may be used for any permitted *principal use* in the RE or ORL district.

B. Area, Height and Placement Standards

Structures on nonconforming lots shall conform to the area, height, and placement standards of its zoning designation with the following exceptions:

1. The ZBA grants a variance in accordance with the procedures in Section **Error! Reference source not found.**
2. In the R4C district, the setback, placement and height standards of the R1C district may be used for *single-family dwellings*.
3. In the R2A district, the setback, placement and height standards of the R1D district may be used for *single-family dwellings*.

C. Corner Lots

When the *front required setbacks* on a *corner lot* reduces the width suitable for a *building* to less than 25 feet, the minimum *front required setbacks* may be decreased so that a *building* 25 feet wide may be Developed.

D. Two Abutting Lots

Where two abutting *lots* are under the same ownership, and where one or both of those *lots* are nonconforming, the *lots* shall be considered as a single *nonconforming lot* subject to all of the provisions of this section.

E. Three or More Abutting Lots

Where three or more abutting *lots* of record are under the same ownership, and where one or more of those *lots* are nonconforming, the requirements of this chapter regarding *lot area* and *lot width* shall not be avoided by the sale or conveyance of any portion of such *nonconforming lots*.

Alteration

Any change or rearrangement in the supporting members of an existing *buildings*, such as bearing walls, columns, girders, or interior partitions, as well as any change in doors, windows, means of ingress or egress, or any enlargement to or diminution of a *building* or *structure*, whether horizontally or vertically, or the moving of a *building* or *structure* from one location to another.

Structure

A combination of materials to form a construction for use, occupancy or ornamentation whether installed on, above or below the surface of land or water.

Structure, Nonconforming

A lawfully-established *building* or *structure* that does not conform to the area, height, or placement regulations of this chapter.