

### **§9-1 Purpose**

Within the districts established by this Ordinance or amendments that may be adopted, there exist lots, structures, uses of land and characteristics of use that were lawful before this Ordinance or amendments thereto were passed, but that would be prohibited, regulated or restricted under terms of this Ordinance or future amendments. Regulations for the continuance, maintenance, repair, restoring, moving and discontinuance of such nonconforming lots, structures, land and uses are established for the following purposes:

- A. To permit these nonconformities to continue, but to minimize any adverse effect on the adjoining properties and development;
- B. To regulate their maintenance and repair;
- C. To restrict their rebuilding if substantially destroyed;
- D. To require their permanent discontinuance if not operated for certain periods of time; and
- E. To require conformity if they are discontinued, to bring about eventual conformity in accordance with the objectives of the Comprehensive Plan and Zoning Ordinance of the Town.

### **§9-2 Nonconforming Uses**

Except as authorized below, no nonconforming use of land shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or an amendment of this Ordinance; nor shall any existing conforming structure devoted to a use not permitted by this Ordinance in the district in which it is located or a nonconforming structure itself or its use, if nonconforming, be enlarged, extended, constructed, reconstructed or moved, except in changing the use of the structure to a use permitted in the district in which it is located or to make the structure conforming.

#### **9-2-1 Restoration of a Damaged Use**

- A. If a nonconforming use is destroyed or damaged by fire, other casualty, act of God or by the public enemy to the extent of less than 75 percent of its assessed value immediately prior to the occurrence, it may thereafter be reconstructed or repaired and occupied. In all other cases, the nonconforming use shall be terminated and any nonconforming structure shall be demolished.
- B. Application for a building permit to repair, replace or reconstruct a partially destroyed or damaged use or structure as authorized in this Section shall be made within six months of the occurrence, and the repair, replacement or reconstruction shall be completed within six months following the issuance of the permit or the nonconforming status of the use or structure shall be terminated, and any nonconforming structure then remaining shall be demolished.

#### **9-2-2 Superseding a Nonconforming Use by a Permitted Use**

Any structure, land or structure and land in combination in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the use regulations of the district.

#### **9-2-3 Moving a Nonconforming Use**

A nonconforming use shall not be moved for any reason other than to conform to the regulations for the district in which it is located after it is moved.

#### **9-2-4 Discontinue or Abandoning a Nonconforming Use**

- A. A nonconforming use discontinued or abandoned for 12 consecutive months or for 18 months during any three-year period shall not thereafter be used or occupied except in conformity with the regulations of the district in which it is located.
- B. Discontinuance of the active and continuous operation of a nonconforming use, or a part or portion thereof, for a period of 12 consecutive months or 18 months during any three-year period, as the case may be, is hereby construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon same or of an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidence of such nonconforming use of the land and premises, the abandonment shall be construed and considered to be completed within a period of less than 12 consecutive months and all rights to reestablish or continue such nonconforming use shall thereupon terminate.

### **§9-3 Nonconforming Structures**

Except as authorized below, no nonconforming structure shall be enlarged, extended, constructed, reconstructed or moved, except as provided in this Section.

#### **9-3-1 Restoration of a Damaged Structure**

- A. If a nonconforming structure is destroyed or damaged by fire, other casualty, act of God or by the public enemy to the extent of less than 75 percent of its value immediately prior to the occurrence, it may thereafter be reconstructed or repaired and occupied. In all other cases, the nonconforming structure shall be terminated and any nonconforming structure shall be demolished.
- B. Application for a building permit to repair, replace or reconstruct a partially destroyed or damaged use or structure as authorized in this Section shall be made within six months of the occurrence, and the repair, replacement or reconstruction shall be completed within six months following the issuance of the permit or the nonconforming status of the use or structure shall be terminated, and any nonconforming structure then remaining shall be demolished.

#### **9-3-2 Enlargement of Nonconforming Structures**

Nonconforming structures may be enlarged or extended, provided that the enlargement does not increase the degree of the existing nonconformity, and the enlargement or extension does not create a new nonconformity.

### **9-3-3 Moving a Nonconforming Structure**

A nonconforming structure shall not be moved for any reason other than to conform to the regulations for the district in which it is located after it is moved.

### **9-3-4 Repair and Maintenance**

- A. On any nonconforming structure or portion of a structure containing a nonconforming use or occupancy, ordinary repair work may be done or repairs or replacements of non-bearing walls, fixtures, wiring or plumbing may be made, provided that the cubic content existing when it became nonconforming shall not be increased.
- B. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it may be strengthened or restored to a safe condition upon order of an official charged with protecting the public safety.

## **§9-4 Nonconforming Sites**

### **9-4-1 Nonconforming Parking, Loading and Stacking Facilities**

- A. 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 and stacking regulations, may be occupied or continued without such parking and/or loading spaces being provided.
- B. Any such spaces that may be provided thereafter shall comply with the regulations of this Ordinance.
- C. If an existing structure, use or occupancy is altered so that there is an increase of the number of dwelling units, seating capacity or floor area, or if the use or occupancy is changed to one requiring more off-street facilities, then off-street parking, stacking and loading spaces shall be provided at least equal to the number required for the increased area for the structure or use in accordance with all provisions of this Ordinance.

## **§9-5 Nonconforming Lots of Record**

### **9-5-1 General Provisions**

- A. In any S-A, R-1, R-2 or R-3 district in which single-family detached dwellings are permitted, a single-family detached dwelling and customary accessory structures may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot shall be in separate ownership and not of continuous frontage with other lots in the same ownership.
- B. 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 these 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 ZBA.
- C. If two or more lots or combinations of lots or portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for width and area, the lands involved shall be considered an undivided parcel for the purposes of this Ordinance. The provisions of this Section shall not apply if any portion of said parcel shall, after the adoption of this Ordinance or amendment, be used or divided in a manner which prevents or diminishes compliance with the requirements established by this Ordinance or amendment thereto.

## **§9-6 Nonconforming Signs**

No sign permitted pursuant to a building permit for a sign or any sign erected and existing prior to May 23, 2006 shall be altered, rebuilt or modified unless it conforms to the requirements hereof and a new building permit for a sign is issued.

### **9-6-1 Signs Eligible for Characterization as Nonconforming**

Any sign that does not comply with this Ordinance is eligible for characterization as a nonconforming sign if:

- A. The sign was erected pursuant to a permit and complied with all requirements then in effect; and
- B. It complies with the provisions of §7-8.

### **9-6-2 Loss of Nonconforming Status**

A nonconforming status for the sign shall terminate, if:

- A. The sign is altered in any way in structure or size (except for normal maintenance);
- B. The sign is relocated;
- C. The sign is replaced; or
- D. There is any change in the tenancy, use or occupancy of the premises served by the sign.

### **9-6-3 Nonconforming Sign Maintenance and Repair**

Nothing in this Section shall relieve the owner or user of a nonconforming sign or owner of the property on which the nonconforming sign is located from complying with the provisions of this Ordinance regarding safety, maintenance and repair of signs, provided that any repainting, cleaning and other normal maintenance or repair of the sign or sign structure shall not modify the sign structure or copy in any way not permitted under §9-6-2. Where signs individually or collectively in a multiple development, as defined in §2-4, are nonconforming, one or more new wall, hanging, fascia or panel on a multi-tenant free-standing sign for an individual tenant space complying with the provisions of §7-8 may be erected whenever the tenancy, use or occupancy of an individual establishment or enterprise changes.