

## Article 4.6 Non-Conforming Uses, Lots, Parcels, Structures and Signs

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### Sections

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### 4.601 Purpose

This article establishes uniform provisions for the regulation of uses, lots, parcels, structures, and signs that were lawfully established prior to the adoption of the Zoning Code, but which would now be prohibited or regulated differently under the requirements of the Zoning Code. It is the intent of this article to encourage the conversion of non-conforming uses, lots, parcels, structures, and signs to conforming status.

### 4.602 Definitions

- A. ***Non-Conforming Use.*** A use that is lawfully being conducted in a structure or on a lot or parcel on the effective date of the Zoning Code, or the effective date of amendments to the Zoning Code, but does not conform with the regulations for the district in which it is located.
- B. ***Non-Conforming Lot or Parcel.*** A legally established lot or parcel that conformed to the dimensional requirements for the district in which it was located at the time of recordation.
- C. ***Non-Conforming Structure.*** A structure that was lawfully constructed under the provisions of the Zoning Code or regulations of the district in effect at the time of construction. A change to the parking, loading, landscaping, or screening regulations in the district does not cause the structure to be non-conforming; provided however that the existing parking, loading, landscaping, or screening shall become non-conforming as of the effective date of the change.
- D. ***Non-Conforming Sign.*** A sign that:
  - 1. Was lawfully established prior to the effective date of the Zoning Code or of amendments thereto; or

2. Was lawfully established in another political jurisdiction prior to annexation to the Town; and
3. That does not conform to the regulations for signs for the district in which it is located.

#### **4.603 General Provisions**

- A. ***Continuation of Non-Conforming Uses.*** A non-conforming use may be continued, except as set forth in Section 4.604: Abandonment of Non-Conforming Uses.
- B. ***Uses in Non-Conforming Structures.*** A permitted use may be extended into any portion of a non-conforming structure.
- C. ***Expansion of Non-Conforming Uses.*** A non-conforming use that occupies any portion of any structure, lot, or parcel shall not be expanded to occupy additional building or land area except as permitted in Table 2.902: Use Regulations. A non-conforming use shall not be expanded in intensity or hours of operation except as permitted in Table 2.902: Use Regulations.
- D. ***Non-Conforming or Substandard Lot or Parcel.*** A non-conforming or substandard lot or parcel that contains at least 80 percent of the minimum lot area required in the district, and has at least 80 percent of all required lot dimensions, may be developed for a use permitted in the district.
- E. ***Non-Conforming Structures.*** A non-conforming structure shall not be altered unless required or permitted by law, unless the alteration will not increase the nonconformity or will result in reduction or elimination of the nonconformity.
- F. ***Non-Conforming Signs.*** Non-conforming signs shall be governed by Section 4.402S: Non-Conforming Signs.

#### **4.604 Abandonment of Non-Conforming Uses**

- A. ***Cessation of Non-Conforming Use.*** A non-conforming use shall terminate 1 year following cessation of the use unless the Zoning Administrator determines that the non-conforming use has not been abandoned, pursuant to Section 4.604B: Determination of Status.

- B. ***Determination of Status.*** A property owner or the Director of Planning may request the Zoning Administrator to determine if a use has been abandoned. The property owner shall have the burden of establishing intent not to have abandoned the use. The Zoning Administrator shall set forth his decision in a Notice of Decision. The Notice of Decision shall be mailed to the property owner by first class mail within 30 days of the filing of the request.
- C. ***Appeal of Zoning Administrator Determination.*** The applicant may file an appeal of the Zoning Administrator's determination to the Board of Adjustment within 10 days of the date of mailing of the Notice of Decision.
- D. ***Fact Finding by Hearing Officer.***
1. Prior to the Board of Adjustment appeal hearing, the Hearing Officer shall conduct a fact finding hearing to gather a complete record of all information pertaining to the request.
  2. The Hearing Officer shall have the authority to request all information necessary to compile a complete record pertaining to the request.
  3. Town officials and the applicant shall fully disclose all information pertinent to the fact finding.
  4. The Hearing Officer shall prepare a report and recommendation for Board of Adjustment consideration within 60 days of the filing of the request.
- E. ***Board of Adjustment Hearing.***
1. The Board of Adjustment shall conduct a public hearing on the request pursuant to the procedures set forth in Section 5.206: Public Hearing Procedures.
  2. In its deliberations, the Board of Adjustment shall consider only the applicant's written request, the findings of fact prepared by the Hearing Officer, and the Hearing Officer's recommendation. No new evidence shall be submitted.
  3. The Board of Adjustment shall uphold or reverse the determination of the Zoning Administrator or remand the matter to the Hearing Officer to develop additional findings.

#### **4.605 Repair or Rebuilding of a Damaged Structure**

- A. If a non-conforming structure has been damaged so that the cost of repair or rebuilding in compliance with current construction codes is less than 50 percent of the value of the structure prior to the damage, the structure may be repaired or rebuilt. The extent of non-conformity shall not be increased by the repair or rebuilding.

- B. If a non-conforming structure has been damaged so that the cost of repair or rebuilding in compliance with current construction codes equals or exceeds 50 percent of the value of the structure prior to the damage, the structure may be repaired or rebuilt, but only in conformance with the Zoning Code except as permitted in Table 2.902: Use Regulations.
- C. The value of a structure and costs of repair or rebuilding shall be determined by the Building Official. The Building Official shall consider appraisals, insurance adjuster's estimates, contract amounts, and similar information.
- D. An appeal of the determination of value may be made to the Building and Construction Regulations Code Board of Appeals. The decision of the Building and Construction Regulations Code Board of Appeals shall be final.