

ARTICLE 13. NONCONFORMING SITUATIONS

13.1 Continuation of Non-conforming Situations and Completion of Non-conforming Projects

Non-conforming situations that were otherwise lawful on the effective date of this ordinance may be continued, subject to the restrictions and qualifications set forth in sections 13.2 through 13.7 of this article.

Non-conforming projects may be completed only in accordance with the provisions of section 13.7 of this article.

13.2 Non-conforming Lots

- 1. When a non-conforming lot can be used in conformity with all of the regulations (other than the area or width requirements) applicable to the district in which the lot is located, such a use may be made as of right. Otherwise, the non-conforming lot may be used only in accordance with a special use permit issued by the Planning Board. The board shall issue such a permit if it finds that (1) the proposed use is one permitted by the regulations applicable to the district in which the property is located, and (2) the property can be developed as proposed without any significant negative impact on the surrounding property or the public health, safety, or welfare. In issuing the permit authorized by this paragraph, the board may allow deviations from applicable dimensional requirements (such as setback lines and yard size minimums) if it finds that no reasonable use of the property can be made without such deviations.**

- 2. Whenever this ordinance creates a non-conforming lot and the owner of the non-conforming lot also owns land adjacent to it, and a portion of this other land can be combined with the non-conforming lot to create a conforming lot (without hereby creating other non-conformity's), the owner of the non-conforming lot, or his successor in interest, may not take advantage of the provisions of the paragraph (1) of this section.**

13.3 Extension or Enlargement of Non-conforming Situations

- 1. Except as specifically provided in this subsection, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a non-conforming situation.**
- 2. Subject to paragraph (4) of this subsection, a non-conforming use may be extended throughout any portion of a completed building that, when the use was made non-conforming by this ordinance, was manifestly designed or arranged to accommodate such use. However, subject to Subsection 13.7 of this section (authorizing the completion of non-conforming projects in certain circumstances), a non-conforming use may not be extended to additional buildings or to land outside the original building.**
- 3. Subject to Section 13.7 of this ordinance (authorizing the completion of non-conforming projects in certain circumstances), a non-conforming use of open land may not be extended to cover more land than was occupied by that use when it became non-conforming, except that a use that involves the removal of natural materials from the lot may be expanded to the boundaries of the lot where the use was established at the time it became non-conforming, if 10% or more of the earth products had already been removed at the effective date of this ordinance.**
- 4. The volume, intensity, or frequency of use of property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.**
- 5. Physical alteration of structures or the placement of new structures on open land are unlawful, if they result in:**
 - a. An increase in the total amount of space devoted to a non-conforming use;**
 - b. Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements; or**

the non-conforming use of such building;

- c. The reconstructed building may not enclose areas that were previously un-enclosed, even though those areas were used in connection with the non-conforming activity. An area is un-enclosed unless at least 75 percent or more of the perimeter of the area is marked by a permanently constructed wall or fence.
9. Except for single-family residential structures (including manufactured homes), if the estimated cost of the reconstruction work exceeds 25 percent of the appraised value of the structure, the work may be done only after issuance of a permit by the Planning Board. The Board shall issue the special use permit if it finds that the work will be done in accordance with this paragraph and that the reconstructed building will not make the property more incompatible with the surrounding property than it was before the destruction occurred.

13.4 Change in Kind of Non-conforming Use

1. A non-conforming use may be changed to another non-conforming use only in accordance with a special use permit issued by the Planning Board. The Board shall issue such a permit if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use in operation at the time the application is made for the permit. If a non-conforming use is changed to any use other than a conforming use without obtaining a special use permit pursuant to this paragraph, that change shall constitute a discontinuance of the non-conforming use, with consequences as stated in section 13.6 of this article.
2. If a non-conforming use and a conforming use, or any combination of conforming and non-conforming uses, or any combination of non-conforming uses exist on one lot, the use made of the property may be changed substantially (except to a conforming use), only in accordance with a special use permit issued by Planning Board. The board shall issue such a permit if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use or combination of uses in operation at the time the permit is applied for.

13.5 Abandonment or Discontinuance of Non-conforming Situations

1. When a nonconforming use is discontinued for a consecutive period of one hundred eighty (180) days, the property involved may thereafter be used only for conforming purposes except for those structures qualifying under section 13.3.8.
2. For purposes of determining whether a right to continue a non-conforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a non-conforming apartment building or one space in a non-conforming manufactured home park for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or manufactured home park as a whole is continuously maintained.
3. If a non-conforming use is maintained in conjunction with a conforming use, discontinuance of a non-conforming use for one hundred eighty (180) days shall terminate the right to maintain it thereafter. For example, if manufactured housing is used as a non-conforming use on the residential lot where a conforming residential structure also is located, removal of that manufactured home for 180 days terminates the right to replace it.
4. When a structure or operation made non-conforming by this chapter is vacant or discontinued at the effective date of this chapter, the 180-day period for purposes of this section begins to run at the effective date of this chapter.

13.6 Termination of Non-conforming Situations

Subject to all other terms and conditions of Article 15 of this ordinance, non-conforming situations shall not be subject to specific time limitations for permanent discontinuation; except for non-conforming junk yards, to include non-conforming uses and situations, which shall be completely removed within three (3) years following the effective date of this ordinance.

13.7 Completion of Nonconforming Projects

1. All work on any nonconforming project shall cease on the effective date of this ordinance. Thereafter, work on nonconforming projects may begin, or may be continued, only pursuant to a special use permit issued by the Planning Board (except as provided in paragraph (2) of this section). The

Board shall issue such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his position in some substantial way in reasonable reliance on the land use law as it existed before the effective date of this ordinance and thereby would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the Board shall be guided by the following:

To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made expenditure to acquire a potential development site if the property obtained is just as valuable under the new classification as it was under the old, for the expenditure can be recovered by resale of the property.

An expenditure shall be considered substantial if it is significant both in dollar amount and in terms of (1) the total estimated cost of the proposed project, and (2) the ordinary business practices of the developer.

A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the land use law affecting the proposed development site could not be attributed to him

Even though a person had actual knowledge of a proposed change in the land use law affecting a development site, the Board may still find that he acted in good faith if he did not proceed with his plans in a deliberate attempt to circumvent the affects of the proposed ordinance. The Board may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that (1) at the time the expenditures were made either there was considerable doubt about whether any ordinance would ultimately be passed, or it was not clear that the proposed ordinance would ultimately be passed, or it was not clear that the proposed ordinance would prohibit the intended development, and (2) the developer had legitimate business reasons for making expenditures.

- 2. The requirements of paragraph (1) of this section shall not apply to a nonconforming project if the Building Inspector certifies that actual construction of that project began at least 180 days before the effective date of this ordinance and that the work is at least 75 percent complete at the effective date of this ordinance.**

- 3. The Planning Board shall not consider any application for a special use permit authorized by paragraph (1) of this subsection that is submitted more than 90 days after the effective date of this ordinance, unless it waives this requirement for good cause shown.**
- 4. If the Planning Board issues a special use permit pursuant to paragraph (1) of this section, it may attach such reasonable conditions to the permit as it finds necessary to reduce the extent to which the nonconforming project is incomparable with the surrounding neighborhood. In particular, the Board may require that work on the nonconforming project be continuously maintained, if possible, and that the project be completed as expeditiously as possible.**
- 5. When it appears from the developer's plans or otherwise that the nonconforming project was intended to be or reasonably could be completed in stages, segments or other discreet units, the Planning Board shall not allow the nonconforming project to be constructed or completed in a fashion that is larger or more extensive than is necessary to allow the developer to recoup and obtain a reasonable rate of return on the expenditures he has made in connection with that nonconforming project.**

Amended June 15, 2004