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NONCONFORMITIES

12.1 PURPOSE & APPLICABILITY

The purpose of this chapter is to regulate and limit the continued existence of uses and structures established prior to the effective date of this ordinance (or any amendment subsequent thereto) that do not conform to this ordinance. Many nonconformities may continue, but the provisions of this section are designed to curtail substantial investment in nonconformities and to bring about their eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the town in accordance with the intent of this ordinance

12.2 NONCONFORMING USES & STRUCTURES

12.2.1 NONCONFORMING USES

- A. **Applicability:** A nonconforming use may continue only in accordance with the provisions of this section. A place of assembly that was permitted by right and that existed prior to the date of this ordinance may be continued, re-established, expanded or enlarged within the lot of record on which it existed as of the date of this ordinance notwithstanding any limitation on the creation, continuation, expansion or enlargement of such use set out in this ordinance. The continued, expanded, or enlarged use within the lot of record shall be a conforming use and the continued, expanded or enlarged building shall be a conforming structure.

Any Place of Assembly that was permitted by right on the day prior to the adoption of this ordinance and that existed prior to the adoption of this ordinance and that existed prior to the date of

SECTIONS

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this ordinance may be continued, expanded, or enlarged within the lot of record on which it existed as of the date of this ordinance notwithstanding any limitation on the creation, continuation, expansion or enlargement of such use set out in this ordinance. The continued, expanded, or enlarged use within the lot of record shall be a conforming use.

- B. **Repair and Maintenance:** Normal repair and maintenance may be performed to allow the continuation of a nonconforming use.
- C. **Damage, Destruction, and Replacement**
 - 1. If a building in which a nonconforming use damage, to an extent greater than 50 percent of the assessed value of the portion of the building in which the nonconforming use is situated, such non-conforming use shall not be continued or re-established.
 - 2. A nonconforming use may be re-established in case of damage, to an extent to or less than 50 percent of the assessed building value, to the structure in which it is located.
 - 3. A nonconforming use not in a structure may be re-established in case of damage, to an extent equal to or less than 50 percent of the assessed improvement value of the property on which it is located provided that the improvements comply as closely as possible to the standards of this ordinance.
 - 4. An application must be filed for such building permit no later than 180 days after the structure has been destroyed or damaged, otherwise the use will not be allowed to be rebuilt. The reconstruction must be diligently pursued.
- D. **Modification**
 - 1. A nonconforming use shall not be expanded, changed or enlarged .
 - 2. A nonconforming non-residential use may expand within the existing building provided the Planning Director determines the interior expansion will not have a negative impact upon surrounding, conforming uses
- E. **Discontinuance**
 - 1. If a nonconforming use is abandoned for 120 days or more, the use shall not be allowed to re-establish.

12.2.2 NONCONFORMING STRUCTURES

- A. **Applicability:** A nonconforming structure may continue only in accordance with the provisions of this section.
- B. Any building or structure that was permitted by right on the day prior to the date of this ordinance may be continued, expanded or enlarged within the lot of record on which the building is situated as of the date of this ordinance notwithstanding any limitation on the continuation, expansion or enlargement of such building set out

in this ordinance. The continued, expanded or enlarged building within the lot of record shall be a conforming structure.

- C. **Repair and Maintenance:** Normal repair and maintenance may be performed to allow the continuation of a nonconforming structure.
- D. **Damage, Destruction, and Replacement:**
 - 1. If a nonconforming structure is damaged to an extent greater than 50 percent of its assessed value for tax purposes, it may be rebuilt only in conformance with the standards of this ordinance.
 - 2. If a nonconforming structure is damaged to an extent equal to or less than 50 percent of its assessed value for tax purposes, then the structure may be rebuilt in accordance with the following standards:
 - a. A building permit for reconstruction of such structure must be secured no later than 180 days from the date of its destruction. The reconstruction must be diligently pursued.
 - b. A nonconforming structure shall not be rebuilt in a manner which increases its nonconformity.
 - 3. **Manufactured Home:** See Section 3.
- E. **Modification**
 - 1. A nonconforming structure may not be enlarged or altered in a way which increases its nonconformity.
 - 2. Should a nonconforming structure be moved for any distance on the lot upon which it is located, it shall be moved so as to make the structure conforming to setbacks.
 - 3. A nonconforming accessory structure may be expanded only if the nonconforming features of that structure are not expanded so as to increase the degree of nonconformity and any expansion conforms to the requirements of this ordinance.
 - 4. No nonconforming accessory structure shall continue after the principal structure is terminated by abandonment, damage, or destruction unless such accessory structure is made to conform to the standards for a principal structure.

12.2.3 RELIGIOUS INSTITUTIONS

Any Religious Institution that was in existence and permitted by right immediately prior to the adoption of this Ordinance may be replaced, continued, expanded or enlarged within the lot of record on which it existed as of the date of this Ordinance notwithstanding any limitation on the creation, continuation, expansion or enlargement of such use set out in this Ordinance. The Religious Institution may use any building type permitted in the Planning Area in which it is located and, in

addition, it may use an institutional building type. The continued, expanded, or enlarged use within the lot of record shall be a conforming use. The person claiming a prior permitted right for a Religious Institution hereunder shall have the burden of proving such prior permitted right.

12.3 NONCONFORMING LOTS

12.3.1 NONCONFORMING LOTS

- A. **Applicability:** Except as specifically stated otherwise in this chapter, a nonconforming vacant lot may be developed for any of the uses permitted by these regulations in the planning area in which it is located, provided that the improvements meet all design regulations and setback requirements.
- B. **Adjoining Lots:** A nonconforming vacant lot shall not be developed if it could be combined with an adjoining lot (owned by the same person) on or after the effective date of these regulations in order to create a single lot. For the purposes of this section, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.
- C. **Subdivision Approvals:** A nonconforming lot may be developed if, at the effective date of this ordinance or any subsequent date upon which the lot became nonconforming:
 - 1. The subdivision in which the lot was located had received Preliminary Plat (Section 14) approval; or
 - 2. The subdivision in which the lot was located had received Final Plat (Section 14) approval.

12.4 NONCONFORMING SIGNS

12.4.1 NONCONFORMING SIGNS

- A. **Applicability:** Except as herein provided, nonconforming signs that were otherwise lawful on the effective date of this ordinance may be continued.
- B. **Maintenance:** Minor repairs and maintenance of a nonconforming sign which are necessary to keep such sign in sound condition, are permitted so long as the nonconformity is not increased.
- C. **Modification**
 - 1. No sign may be enlarged or altered in such a way that increases the extent of nonconformity of a nonconforming sign or causes a previously conforming sign to become nonconforming.

2. A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this ordinance.
 3. Any nonconforming changeable copy sign may be changed so long as it does not create any new nonconformities.
- D. **Damage or Destruction:** If a nonconforming sign is damaged to an extent more than 50 percent of the sign's value immediately prior to such damage it shall be repaired, reconstructed, or replaced to conform with this ordinance or be removed in its entirety
- E. **Discontinuance**
1. Once a nonconforming sign is discontinued, it may only be replaced with a sign which is in conformance with this ordinance.
 2. A nonconforming sign which advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that has for a period of at least 120 days not been operated, conducted or offered, shall be removed or brought into compliance within 30 days after such abandonment.
 3. If a nonconforming sign remains blank for a continuous period of 120 days, that sign shall be deemed abandoned and shall, within 30 days after such abandonment, be altered to comply with this ordinance or be removed. For purposes of this ordinance, a sign shall be deemed "blank" if:
 - a. The advertising message it displays becomes illegible in whole or substantial part; or
 - b. It does not contain an advertising or identification message. (For such purposes, the terms "Building for Rent", "Building for Lease", "Building for Sale", etc. shall not be deemed to be an advertising or identification message).



Example 12-1: Nonconforming monument signs

12.5 NONCONFORMING PLANS

12.5.1 NONCONFORMING PLANS

- A. **Applicability:** Any site specific plan including, but not limited to, Site Plans (Section 14), Preliminary Plats (Section 14), Final Plats (Section 14) and Conditional District plans (Section 14) – for the development of property and/or construction of a building which has received final approval by the applicable authority, but does not conform to this ordinance, may be developed and/or constructed in accordance with the ordinance rules and regulations, (including any conditions imposed by the approving authority,) and the details of the site specific plan, pursuant to which such plan was approved. Any plan approved prior to the adoption of this ordinance, but which conforms to its provisions, shall be administered, interpreted, amended and implemented in accordance with the provisions of this ordinance.
- B. **Option to Make Conforming:** The owner of property which contains an approved site specific plan may elect to develop such property and/or construct such building in accordance with the terms and provisions of this ordinance in lieu of the rules and regulations under which the plan was approved. An owner who wishes to make such election shall notify the Administrator, who shall approve the plan and notify the property owner in writing of the additional approvals or modifications, if any, which may be necessary in order for the plan to conform to this ordinance. In making such finding, the Administrator shall require additional approvals and/or modifications only if such are necessary in order to avoid a result which would not occur under the original approved plan or under a new review process under this ordinance.
- C. **Amendments and Modifications:** Any amendment or modification to an approved site specific plan shall be reviewed and acted upon in accordance with the terms and provisions of this ordinance as if it were an amendment or modification to a plan originally approved under this ordinance.
- D. **Vested Rights:** Nothing herein is intended to prohibit the exercise of any vested right established by common law, ordinance or statute.

12.6 APPEALS & MODIFICATIONS

12.6.1 APPEALS

- A. The Board of Adjustment shall hear and decide appeals from any land owner:
 - 1. To make a change in use of a nonconforming use to a less-intense nonconforming use;
 - 2. To make a change in location of a nonconforming use of land to another location on the same property; or
 - 3. To allow the replacement of a nonconforming use.

12.6.2 MODIFICATIONS

- A. The Planning Board / Board of Adjustment may only grant a change in a nonconforming use, or replacement of a nonconforming structure which has been destroyed, after having first held a public hearing and having determined that:
 - 1. Said change will be more suitable and appropriate for the lot(s) on which the nonconformity is located than the existing situation; and
 - 2. The proposed change will have a less harmful effect than the existing nonconformity on the properties surrounding the lot(s) in question; and
 - 3. The decision to grant the change will be in harmony with the general purpose and intent of this ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public welfare.
- B. The Planning Board / Board of Adjustment, in granting said changes, may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards shall be deemed a violation of this ordinance and shall be punishable as prescribed in Chapter 15 of this ordinance.