

ARTICLE V: NONCONFORMITIES AND SUBSTANDARD LOTS OF RECORD

The purpose of this Article is to provide for the regulation of nonconforming buildings, structures and uses and to specify those requirements, circumstances and conditions under which nonconforming buildings, structures and uses will be operated and maintained. It is the intent of this Ordinance that nonconforming uses shall be encouraged to eventually be brought into conformity. Legally established nonconformities existing as of the date of this Ordinance, or as of the date of an amendment which resulted in the nonconformity, are allowed to be continued, but they will be restricted as to any expansion, additions, or intensification of use.

Section 501. Nonconforming Uses and Structures

Any use or structure lawfully existing upon the effective date of this Ordinance that is not located in the Shoreland Overlay District may be continued at the size and in the manner of operation existing upon such date, subject to the following conditions:

- A. Except as expressly allowed in (501.B) of this Ordinance: a nonconforming use of land or nonconforming structure shall in no way be expanded, enlarged or extended either on the same property or onto an adjoining lot of record if it will increase the area of nonconformity or create another nonconformity on the parcel.
- B. Prohibited expansion, enlargement or extension shall include anything that increases the intensity of the use, including, but not limited to, a change to a more intense nonconforming use or a physical expansion of the existing use that increases the height, volume and/or area dimensions of the nonconforming use.
- C. Nonconforming principal and accessory structures may be expanded or enlarged upon if the following apply:
 1. The use of the property conforms to zoning district regulations,
 2. That all parts of the new expansion or enlargement meets current zoning district regulations,
 3. The individual sewage treatment system, where existing, is in full compliance with this Ordinance and all applicable statutes and rules are complied with, and
 4. No other nonconformities are created.
 5. Such expansion or enlargement of a non-conforming principal or accessory structure may be approved by administrative site plan approval in conjunction with a building or land use permit application provided the area of the new improvements does not add to the existing nonconformity nor does it create another nonconformity.
 6. All additions or alterations which expand or enlarge the total existing structure area on the parcel which cannot meet all other current zoning district regulations may only be authorized by a variance in accordance with Article XII of this Ordinance.

- D. Routine maintenance of a structure containing or relating to a lawful nonconforming use is permitted, including any necessary nonstructural repairs and incidental alterations which do not extend or intensify the nonconforming use. Nothing in this Section will prevent the placing of a structure into a safe condition after it has been declared unsafe by a Certified Building Official.
- E. Alterations may be made to a building containing nonconforming residential units when the alterations will improve the livability of such units, provided that such alterations do not increase the number of dwelling units in the building. Such alterations must be approved by the Planning Administrator.
- F. Whenever a nonconforming structure or use is damaged by fire, collapse, flood, explosion, earthquake, war, riot, act of God or public enemy or to the extent of fifty percent (50%) or less of its estimated market value as indicated in the records of the county assessor at the time of damage, it may be reconstructed. The nonconforming structure or use shall not be permitted to be reconstructed if the damage is greater than fifty percent (50%) of its estimated market value as indicated in the records of the county assessor at the time of damage and no building permit has been applied for within one hundred and eighty (180) days of when the property was damaged.
- G. When any lawful nonconforming use of any structure or land is replaced by another use or new structure of different size, the new use or structure must conform to the provisions of this Ordinance and it shall not thereafter be changed to any nonconforming use or structure.
- H. If the nonconforming use of land is discontinued for a period of twelve (12) months, the subsequent use of the land or the structure shall be in conformity with the provisions of this Ordinance.
- I. Nonconforming uses or structures which are declared by the Joint Planning Board to be public nuisances shall not be allowed to continue as legal nonconforming uses or structures.
- J. If a nonconforming use is determined to be uninhabitable the Joint Planning Board may ask the property owner to demo the structure. If the structure's location and size are surveyed the owner can maintain the nonconforming location of a structure. Examples include setbacks and height of a structure.
- K. No repair, replacement, maintenance, improvement or expansion of a nonconforming use or structure in a floodplain area shall be allowed if such activity would jeopardize the property's continued eligibility in the National Flood Insurance Program, would increase flood damage potential, or would increase the degree of obstruction to flood flows in the floodway.

Section 502. Substandard Lots of Record

A lot of record existing upon the effective date of this Ordinance may be used for the erection of a structure without meeting the minimum lot area and lot width requirements provided that:

- A. The use is permitted in the zoning district;

- B. The lot has been in separate ownership from abutting lands at all times since it became substandard;
- C. The lot was created compliant with the official controls in effect at that time;
- D. The sewage treatment and setback requirements prescribed by this Ordinance are met;
- E. The lot area and width are within sixty-six percent (66%) of the minimum requirements of this Ordinance. All B-1, R-1, R-2, and R-3 districts must meet the standards of Section 502(F).
- F. In the B-1, R-1, and R-2 districts, existing lots of record greater than one (1) acre and with a width of at least one hundred (100) feet, or in the R-3 district, existing lots of record greater than thirty thousand (30,000) square feet and with a width of at least one hundred (100) feet may be developed without a variance, provided all other standards of this Ordinance are met;
- G. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a structure or facility to be constructed or placed on a substandard lot that does not meet the setback provisions of this Ordinance. In evaluating the variance request, the Board of Adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot, and shall deny the variance if adequate facilities cannot be provided; and,
- H. Appropriate land use and/or building permit(s) is/are obtained from the Planning Administrator or building authority.
- I. A nonconforming lot of record cannot be created without a variance application and Joint Planning Board approval through the public hearing process.