

§ 235-62. Nonconforming signs.

A sign lawfully installed prior to the adoption of this chapter for which a permit has been previously issued, or if a permit is obtained for said sign within six months after the effective date of this chapter, shall be deemed a permitted nonconforming sign. Such a nonconforming sign shall, however, be subject to the following regulations:

- A. No nonconforming sign shall be altered in any way in structure or material which makes the sign less in compliance with the requirements of this chapter than it was prior to the alteration.
- B. No nonconforming sign shall be relocated to a position making it less in compliance with the requirements of this chapter.
- C. If the nonconforming sign is removed, except for maintenance or seasonal storage, it shall be replaced only with a sign that is in conformance with the provisions of this chapter.
- D. Should a nonconforming sign be destroyed by any means to an extent of more than 75% of its replacement cost at the time of its destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

ARTICLE X**Nonconforming Lots, Uses and Structures****§ 235-63. Purpose and intent.**

- A. Purpose. The purpose of this article is to encourage the discontinuance of nonconforming uses or the change of nonconforming uses to conforming or more conforming uses, and to allow and regulate lawfully existing uses, structures and lots not in conformance with the applicable regulations of the Zoning Ordinance. This article establishes provisions for three classes of nonconformity relating to:
 - (1) Lots: the size, dimensions or frontage of a lot.
 - (2) Uses: the land use(s) or type of development occurring on the lot.
 - (3) Structures: the location, dimension and lot coverage of structures built upon the lot.
- B. Multiple nonconformities. A single property may exhibit one or more types of nonconformity. It is the intent of this chapter that each type of nonconformity be treated distinctly, even where one or more nonconformities occur together on a given property.
- C. Change in ownership or management. Nothing herein contained shall be construed as prohibiting change in tenancy, ownership, or management of a nonconforming lot, use, or structure, provided that such change is otherwise lawful.
- D. Applicability in Shoreland Protection District. Nonconforming lots of record and nonconforming structures within the Shoreland Protection District shall also be governed by the provisions of RSA 483-B:10 and 483-B:11, Shoreland Protection District,

Nonconforming Lots of Record and Nonconforming Structures, respectively. In the event of a conflict between applicable regulations, the more restrictive conditions shall apply.

§ 235-64. Determination of nonconformity.

- A. Evidence of a nonconforming use. In reviewing an application for a building permit or other application for land use change or structural alteration involving a nonconforming use, building or lot, the Director of Planning and Community Development or his or her designee shall make a determination as to the existence of a nonconforming use. In so doing, the Director of Planning and Community Development or his or her designee may require the property owner, or his agent, to produce acceptable evidence attesting to said legal nonconforming status. Such evidence shall include, but is not restricted to such documents as rent receipts, affidavits, documentation of utility services, or other information as may be deemed to be necessary in a particular case. **[Amended 8-14-2000 by Ord. No. 07.2000.07]**
- B. Status of uses authorized by special exception. Any use in lawful existence at the time of passage or amendment of this Zoning Ordinance which would thereafter require a special exception under its terms shall without further action be deemed a conforming use. Any enlargement or replacement of such use, in buildings, or on land, shall require a special exception as though it were a new use.
- C. Nonconforming use status limited to permanent lawful uses. The casual, temporary, or illegal use of land or structures, or land or structures in combination, shall not be sufficient to establish the existence of a nonconforming use or to create rights in the continuance of such use.
- D. Nonconformity created through public taking. Where the dimensional nonconformity of a structure is created by government acquisition of property such structure shall not be regarded as a nonconforming use, and may be continued, structurally altered, reconstructed, repaired or enlarged so long as it remains an otherwise lawful use; provided, that any structural change, repair, addition, alteration or reconstruction, shall not increase, extend, enlarge or affect the dimensions which are deficient.

§ 235-65. Nonconforming lots of record.

- A. Evidence of nonconforming lot. A nonconforming lot shall be deemed to exist where the Director of Planning and Community Development or his or her designee finds, based on evidence submitted by the property owner, that all of the following conditions are true: **[Amended 8-14-2000 by Ord. No. 07.2000.07]**
 - (1) The lot was created prior to the effective date of this chapter, or prior to the relevant amendments affecting the conformity of the lot, and no further division has occurred since that date.
 - (2) The lot has not previously been reviewed under this article.
 - (3) The lot met the minimum size, frontage and area standards which were in effect when the lot was created.

- (4) The lot does not conform with present size, frontage, or area standards for the zoning district, and the present owner does not own, and has no contract, option or other enforceable legal right to acquire any adjoining property to the extent necessary to make the lot conforming with present standards, or is prevented by law from doing so.
- B. Date lot was created. The date of creation of a lot shall be considered established by its most recent change in configuration by parcel area reduction, consolidation, land division, vacation or other official action, if such was required.
 - C. Actions by land use boards may not create nonconformity. Nonconforming lots shall not be created through the grant of a variance, special exception, conditional use or other development permit, except to the extent authorized within this article.
 - D. Use of a nonconforming lot. A lot which failed to conform with size or dimension requirements which were in effect under ordinances or regulations at the time of division shall not by reason of that defect alone be denied any land development permit otherwise available under current ordinances. Nonconforming lots of record may be developed for the purposes of the zoning district under the following conditions.
 - (1) Substandard lot size. When a nonconforming lot can be used in conformity with all applicable regulations except for minimum lot size, then the lot may be used for a permitted use, subject to all other standards which apply to that use under the Zoning Ordinance. However, no use which requires a lot size greater than the established minimum lot size for a particular zone is permissible on a nonconforming lot.
 - (2) Inadequate dimensions to meet setback requirements. When the proposed use of a nonconforming lot is one that would be conforming in all respects, except that the applicable setback requirements cannot reasonably be complied with, then the Zoning Board of Adjustment may issue a special exception for deviation from setback requirements if it finds that:
 - (a) The property cannot reasonably be developed for the proposed use without the setback deviation.
 - (b) These deviations are necessitated by the size and shape of the nonconforming lot and not for convenience of the owner or financial advantage.
 - (c) The property can be developed as proposed without causing a significant adverse impact on surrounding properties or the public health or safety.

§ 235-66. Nonconforming structures.

- A. Repair and maintenance. Normal repairs, renovations and maintenance may be made to any nonconforming building or structure, except as provided for in § 235-68 of this article, Abandonment; termination due to abandonment. Nothing in this chapter shall prevent the strengthening or restoring to safe condition any building or part thereof upon order by any official charged with protecting public safety.

B. Replacement.

- (1) Residential accessory structures. Any nonconforming residential accessory structure such as a garage, shed, deck or porch may be razed and replaced in its entirety, provided that it is replaced in the same location, and for the same purpose, with no expansion in the size of the structure whatsoever.
- (2) Manufactured housing units. Provisions for the replacement of manufactured housing units are contained within Article VII, § 235-40A, Manufactured housing units.
- (3) Casualty loss. Any nonconforming structure which is completely or substantially destroyed by casualty loss may be replaced with a similar structure which has the same dimensions and meets the setbacks of the previously existing structure. A good faith effort must be made to replace the structure within one year of the date of the loss, as minimally exhibited by the possession of a building permit.
- (4) Any nonconforming structure which contains a conforming use may be replaced with a similar structure which has the same dimensions and meets the setbacks of the previously existing structure. A good faith effort must be made to replace the structure within one year of the date of the loss, as minimally exhibited by the possession of a building permit.

C. Structural alterations.

- (1) Reduction in nonconformity. Nonconforming structures may be partially replaced or replaced with a new structure which reduces the nonconformity of any dimensional requirements.
- (2) Additions. Additions may be made to nonconforming structures which contain conforming uses provided that the area of the addition meets the current dimensional requirements and the development of the lot does not result in nonconformity due to green space requirements.

D. Nonconforming signs. Provisions governing nonconforming signs are contained within Article IX, Signs.**§ 235-67. Nonconforming uses.**

- A. Continuation of use. Where a nonconforming use, or where nonconforming characteristics of a use exist, such as signs, off-street parking and loading, lighting, landscaping or similar features, such nonconforming uses and characteristics of use may continue except as provided in this article.
- B. Limits on expansion of a nonconforming use. A nonconforming use may be extended to unused parts of a lawfully existing building or structure existing as of the date of this chapter. Any other expansion requires a conditional use permit. The Planning Board may grant a permit only after it makes a finding that the following standards have been met, in addition to those listed in § 235-75A through H. The Board may impose any

reasonable conditions to insure compliance. [Amended 5-22-2000 by Ord. No. 05.2000.05³⁶]

- (1) Documentation is submitted and the City has verified that all aspects of the existing use have been lawfully established and that there are no current land use violations on the site.
 - (2) The existing and proposed expansion of the use meets all applicable requirements of this chapter, to be applied as if the use were permitted.
 - (3) Special consideration has been made to promote the overall purpose of the district in which the nonconforming use exists and to design the use so that the appearance is one of a conforming use.
- C. Replacement of nonconforming use authorized by special exception. A special exception may be issued for the replacement of a nonconforming use with another nonconforming use subject to the standards below and to the conditions attached to such exception by the Zoning Board of Adjustment.
- (1) There will not be an adverse impact on the surrounding neighborhood.
 - (2) The replacement will be equally or more conforming with the purposes of this chapter and the intent of the zoning district. In making these determinations, the Zoning Board of Adjustment must find that all of the following conditions will be met:
 - (a) The proposed replacement would not result in an increase in noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.
 - (b) The numbers and kinds of vehicular trips to the site will be comparable to or lower than those associated with the existing use.
 - (c) The replacement will not place increased demand on the amount and nature of outside storage or loading requirements, and there will be no net loss in the number of existing off-street parking spaces serving the existing use(s).
 - (d) The visual appearance of the site and structure will either remain unchanged or will be improved.
 - (e) The proposed hours of operation for the use will result in an equal or lesser impact on the neighborhood.
 - (f) Nonconforming characteristics of the existing use including signs, loading, lighting and landscaping, will be brought into conformance with the requirements of this chapter.
 - (g) The nonconforming use area of the lot will not be increased.

36. Editor's Note: This ordinance also deleted former Subsection B, Expansion of nonconforming use area of a lot not permitted, and redesignated former Subsections C and D as Subsections B and C, respectively.

- (h) The gross square foot floor area of the building housing the existing nonconforming use will not be expanded as a result of the replacement.
 - (i) The replacement will be equally or more compatible with the neighborhood, will contribute to neighborhood socioeconomic needs or will otherwise be in the public interest.
- (3) The applicant surrenders all rights in the previously existing nonconforming use.

§ 235-68. Abandonment; termination due to abandonment.

The term "abandonment," as used herein, shall mean the voluntary discontinuance of a nonconforming use or the occupancy of a nonconforming structure. Normal, seasonal cessation of a use or a temporary discontinuance for purposes of maintenance, rebuilding after damage or destruction or maintenance or improvements permitted under this article shall not be included in calculating the period of discontinuance. Any one of the following shall constitute evidence of abandonment of a nonconforming use:

- A. Failure to make a good faith effort to take the necessary steps to resume the nonconforming use or occupancy with reasonable dispatch in the circumstances, such as advertising of the property for sale or for lease.
- B. Discontinuance of the occupancy or nonconforming use for 12 consecutive months.

ARTICLE XI
Zoning Board of Adjustment

§ 235-69. Zoning Board of Adjustment established; composition; officers; application procedure.

- A. Appointment and terms. Pursuant to RSA 673, Establishment of Boards, a Zoning Board of Adjustment shall be established, consisting of five members and up to five alternate members, all appointed by the City Council for three-year terms. Alternate members may fulfill the duties and responsibilities of a regular member when a regular member is disqualified from consideration of a particular application.
- B. Organization and rules of procedure. On an annual basis, the Board shall elect a Chairman and other officers from among its membership. The Board shall adopt, and from time to time amend, rules of procedure for the conduct of its business. The rules of procedure shall establish a regular meeting schedule so as to allow for the expeditious consideration of appeals.
- C. Application procedure. Application procedures are as indicated in this section and by RSA 676:5-7, Zoning Board of Adjustment. Where there is a conflict the more stringent provisions shall apply.
 - (1) Application fees. A nonrefundable fee shall be submitted together with an application to cover the costs of the advertising, notification and processing of the