

## **§6 NON CONFORMING USES, BUILDINGS AND LOTS**

### **6-1 Non-Conforming Uses**

#### **6-1.1 Continuance**

Any non-conforming use of buildings, structures or land may be continued.

#### **6-1.2 Extension, Expansion or Relocation**

No non-conforming use of buildings, structures or land shall hereinafter be extended, expanded, or relocated on the same lot.

#### **6-1.3 Transformation**

No non-conforming use of buildings, structures or land shall hereinafter be transformed into a new or different non-conforming use, except as follows:

- 6-1.3.1 The Commission, by Special Permit and Site Plan Review in accordance with §43, herein, may allow a change from one non-conforming use to another non-conforming use:
- (a) where those parts of an existing building site are manifestly designed or arranged for such new or different use.
  - (b) where such new use is not precisely the same as the old use, but the new use is generally similar to the old use; and
  - (c) where the transfer or change does not involve replacing existing non-conforming structures with new non-conforming structures in whole or in part.
  - (d) where the new or different use does not constitute the extension or expansion of an old use, or part thereof on the same lot.

#### **6-1.4 Discontinuance**

No non-conforming use of buildings, structures or land which shall have been discontinued for more than 90% of the time during a period of twelve (12) consecutive months shall be resumed or replaced by the same or any other non-conforming use; except that any building, structure or portion thereof containing a non-conforming use which has been destroyed or damaged by fire, explosion, act of God or other casualty may be restored and continued as a non-conforming use to the same extent as said use existing before such destruction, provided that such non-conforming use shall be restored within two (2) years of such destruction and further provided that such non-conforming use shall not be extended, expanded, or transformed into a different non-conforming use. (also see §31-9.1)

#### **6-1.5 Use Permitted By Variance**

A use of land or of a structure which is not a permitted use in the district in which it is located but which is permitted by variance shall be deemed to be a nonconforming use.

## **6-2 Non-Conforming Buildings and Structures**

### **6-2.1 Expansion, Extension or Alteration**

A non-conforming building or structure may not be expanded, extended, relocated or altered if such expansion, extension, relocation or alteration would increase the degree of any non-conformity. Specifically:

- 6-2.1.1 No non-conforming building or structure shall be relocated on the lot.
- 6-2.1.2 No portion of any non-conforming building coverage on a lot shall be transferred from one location to another location on the lot.
- 6-2.1.3 No portion of any non-conforming building coverage that is attributable to an open structure without a roof, such as a deck, roof garden, balcony, open entry, handicapped ramp, swimming pool, tennis court, paddle tennis court, etc., shall be roofed over, enclosed or otherwise expanded, extended or altered in any vertical or horizontal direction from a structure into a building. (See definitions).
- 6-2.1.4 A building or structure which is prohibited by these regulations but which is permitted by variance shall be deemed to be a non-conforming building or structure.
- 6-2.1.5 The replacement of entry steps or platforms projecting into the setbacks or in excess of coverage and no larger in area than the existing entry steps and/or platform are not considered an expansion, extension, or alteration.
- 6-2.1.6 All new construction shall be in accordance with these regulations.
- 6-2.1.7 If an existing building or structure is nonconforming as to setback, the portion of the building or structure within the setback shall not be roofed over, enclosed, extended, expanded or altered in any vertical or horizontal direction.

### **6-2.2 Coverage**

If an existing building or structure does not conform to the building coverage requirements in a residential zone A, B or any non-residential zone or the total coverage requirements in a residential zone AA or AAA it shall not be expanded or extended.

### **6-2.3 Restoration**

Any non-conforming building or structure or non-conforming portion of a building or structure which has been destroyed or damaged by fire, explosion, act of God, or by other casualty may be restored or reconstructed to the same non-conforming building or structure as existed before such damage; provided that

- (a) such restoration or reconstruction shall be limited to the damaged portion of the building or structure;
- (b) such restoration or reconstruction shall begin within one (1) year and shall be completed within two (2) years of such damage; and

- (c) such restoration or reconstruction shall adhere to all procedures necessary to obtain a proper Zoning Permit. The owner of such damaged building or structure may replace and reorganize the same amount of gross interior floor space in a manner to more nearly conform to these regulations.

**6-2.4 Unsafe Conditions**

Nothing herein shall prevent the strengthening or restoring to a safe condition of any existing non-conforming building, structure or *any* part thereof which shall have become unsafe as determined by the Building Inspector or Fire Marshal.

**6-3 Non-Conforming Lots**

A new building, structure or use, or an addition to an existing structure on a non-conforming lot shall comply with all applicable requirements of the zoning district in which it is located, except for setbacks.

**6-3.1 Setbacks**

The setback requirements for any principal building, structure or use or accessory building or structure, located on a lot with a non-conforming gross lot area as defined in Appendix D shall be as follows:

| LOT SIZE IN SQUARE FEET | FRONT SETBACK | SIDE SETBACK | REAR SETBACK |
|-------------------------|---------------|--------------|--------------|
| 0-5,999                 | 20'           | 7.5'         | 25'*         |
| 6,000-10,889            | 30'           | 7.5'         | 25'          |
| 10,890-21,779           | 30'           | 10'          | 25'          |
| 21,780-43,559           | 30'           | 15'          | 25'          |
| 43,560-65,339           | 30'           | 25'          | 25'          |
| 65,340-or more          | 50'           | 50'          | 50'          |

\* 15 feet minimum required rear setback for accessory building or structure, only.

**6-3.2 Adjoining Lots**

If two or more adjoining lots of record, one or more of which are undeveloped and fail to meet the requirements of these regulations with regard to lot area and/or lot shape, were in the same ownership on March 24, 1956 or subsequent date, and if such lots taken together would form one or more lots, each more nearly meeting the requirements of these regulations with regard to lot area and lot shape, such lot or lots shall merge and shall no longer be considered legally existing as separate lots and must be combined and used in compliance with the present lot area and lot shape requirements irrespective of subsequent changes in ownership; except that this provision shall not affect the interest of a mortgagee who holds a properly executed and recorded mortgage and shall not preclude a foreclosure of any individual lot.

**6-3.3 Height**

The maximum height of the principal building located on a lot with a gross lot area as defined in Appendix D less than the required minimum gross lot area for that zone in a residential zone south of the railroad shall be as follows:

| <b>Lot Size Max.</b> | <b>Maximum Stories</b> | <b>Maximum Feet (See Building Height)</b> |
|----------------------|------------------------|---|
| 0-5,999              | 2                      | 26  |
| 6,000-10,889         | 2                      | 26  |
| 10,890-21,779        | 2                      | 26  |
| 21,780-43,559        | 2 ½                    | 30  |
| 43,560 or more       | 3                      | 40  |

**6-4 Altered Non-Conformity**

**6-4.1** Except as provided in §6-4.2, no non-conforming use, building, structure or lot, if once changed to conform with these regulations shall be changed so as to be non-conforming again. No non-conforming use, building, structure or lot, if once changed to more nearly conform with these regulations, shall be changed so as to be less conforming again.

By way of example but not limitation, if the floor area of a lot that is non-conforming as to FAR or parking is reduced by demolishing all or part of a structure, or by filling in a cellar, or by converting a cellar to crawl space, such reduced floor area or the resulting reduced parking requirements may not be increased beyond the level permitted by the regulations.

This section shall not apply to alterations of an area less than 200 square feet of floor area to the entrance or exit of a building that is non-conforming as to floor area.

**6-4.2** Effective June 21, 1996 a premises that is non-conforming as to parking may change from a use with given parking requirements (existing use) to a use with lesser parking requirements (lesser use) then back to the existing use, subject to the following conditions:

- (a) Both uses are permitted uses.
- (b) The owner gives the Planning and Zoning Office prompt written notification when the change to the lesser use is made.

The change back to the existing use occurs not more than ten years from the date of the change to the lesser use, and receives site plan approval.

**6-5 Establishment of Legal Pre-existing Non-conformity**

A non-conforming use or structure in a non-residence district must be supported by a written statement demonstrating that it legally existed at the time these regulations were first established, or was a permitted use under these regulations prior to their being amended; that it has been in continuous use; and that its scope has not been illegally expanded.

## **6-6 Redevelopment of Split Zoned Properties**

### **6-6.1 Non-Conforming Buildings**

Notwithstanding the above, on lots with a minimum of two hundred (200) feet of frontage on the Post Road containing three (3) or more acres zoned both GBD and Residence A at the time of the effective date of this section (Section 6-6) of the zoning regulations, a non-conforming building(s) and its uses may be allowed full or partial redevelopment, in either or both zones, provided the redevelopment shall result in the reduction, of existing non-conformities of building coverage, total coverage, and floor area, for the entire site treated as a single zoning entity, subject to the following:

- 6-6.1.1 Redevelopment shall be pursuant to Special Permit and Site Plan review, consistent with §34, §35, §43 and §44, unless specifically modified by the Commission, as follows:
- (a) The requirement of a Residential District Boundary setback per §24-4 shall not apply along the internal boundary line within the site; and
  - (b) In the portion of the site zoned Residence A, floor area may be increased, provided:
    - (i) The overall non-conforming floor area is reduced;
    - (ii) The overall non-conforming building coverage is reduced;
    - (iii) The overall non-conforming total coverage is reduced;
    - (iv) Non-conforming landscaped buffer strips are made to conform to the requirements of §35-2.4; and
    - (v) Existing undeveloped land in the Residence A zone is protected by a permanent conservation easement.
- 6-6.1.2 Where redevelopment is for a motel, hotel, motor inn, or tourist court, the Commission may determine that:
- (a) The size, location, and operation of “related eating facilities” and meeting room floor area warrants any additional parking spaces.
  - (b) “Related eating facilities” may include, but are not be limited to:
    - (i) Self-service of foods already prepared or prepared and cooked quickly to be consumed on the premises, but shall not be a fast food restaurant;
    - (ii) The retail sales of alcohol to be consumed on the premises, as allowed by a Restaurant Permit granted by the Department of Liquor Control and;
    - (iii) Seasonal outdoor seating;
    - (iv) A patron bar.
  - (c) Existing non-conforming loading spaces and turning radii located under existing buildings may be allowed to remain.