

## **SECTION 105 - NON-CONFORMING USES AND STRUCTURES**

A non-conforming use is a use that at one time was a legal conforming use that is no longer considered a conforming use due to a change in the Town's land use ordinances. The lawful use of any building, structure, or land existing at the time of the effective date of this Ordinance may be continued, although such use does not conform with the provisions hereof. However, such use shall be subject to current Town regulations to protect the health, safety and welfare of the public. Non-conforming uses are a fixture of the property from owner to owner so long as they remain non-conforming uses or structures.

### **A. Abandonment:**

A non-conforming use must be an on-going concern for a continuous basis for a period of one year or such use shall be deemed to have been abandoned and any subsequent use shall conform with the provisions of the Town's most current ordinance. Once a non-conforming use or structure is abandoned it shall not be returned to a non-conforming use or structure.

### **B. Wear and Tear:**

Nothing in this Ordinance shall prevent the reconstruction, repairing and continued use of a nonconforming structure or part thereof rendered necessary by wear and tear, deterioration or depreciation.

### **C. Restoration:**

Any non-conforming structure or a conforming building containing a non-conforming use, damaged, or destroyed by casualty or Act of God may be restored within a twelve month period therefrom without impairment to any non-conforming status.

### **D. Change of Use of Property where a Non-conforming Use Exists:**

1. A non-conforming use shall not be changed to a different non-conforming use. This shall not prevent a name change or change in ownership of the same non-conforming use.
2. If a change in use is from an impermissible to a permissible use, but full conformance with current standards cannot be achieved, then the change may be allowed subject to the Board of Adjustment granting a variance. In addition to other findings required for a variance the Board must find that, compliance is not reasonably possible if compliance cannot be achieved without the addition of land or without moving a substantial structure that is on a permanent foundation. Financial hardship related to such requirements as paving a parking lot, may not constitute grounds for granting a variance/waiver.

3. A change in volume or intensity alone does not constitute a change in use. A change in use requires an actual change in the type of activity.
4. A non-conforming use may not expand. Expansion is defined to include a geographic increase of the actual use, as well as an increase in volume or intensity.
5. Non-conforming uses or structures are not transferable to other properties or parcels not covered by original non-conforming use or structure.

**E. Mixed Uses:**

Non-conforming and conforming uses and structures may be included on the same lot within limits of the District regulations for conforming uses and structures.

**F. Verification of an Existing Non-conforming Use:**

The Use of the premises must adapt the land for the use and employ the premises for the non-conforming purposes. The use need not be in actual operation when the land use ordinance that changes the use from legal conforming to legal non-conforming takes or took effect, but it must have been used for that purpose within the twelve month period preceding the change; however, the casual, intermittent, temporary or illegal use of land or building shall not be sufficient to establish the existence of a non-conforming use. Nothing in this paragraph shall be construed to mean that any use is exempt from regulations enacted to protect public health, safety and welfare.

Two or more of the following methods may verify an existing non-conforming use:

1. Records of use of land or structures in the County Assessor's office, County Planning and Zoning/Building Safety Office, County Health Department, or other government agency with sufficient information to show that the use predates existing zoning.
2. Similar evidence from utility companies, business or private records.
3. Affidavit(s) from individual(s) testifying that the property was used for a purpose that predates adoption of the zoning in question.

**G. Appeal:**

Any person aggrieved by the decision of the Community Development Director may request an appeal to the Board of Adjustment.

**H. Application and Hearing Procedure:**

Any property owner may apply for determination of a non-conforming use by means of the procedures listed below:

1. Application for designation as a non-conforming use will be in writing to the Town Planning and Zoning Department. The application will include, at a minimum, the following:
  - a) Name, address and telephone number of the property owner
  - b) Address and assessor's number of the subject property
  - c) The nature of the non-conforming use or structure
  - d) Any documentation to support the request
  - e) An application fee: Current Fee Schedule
2. Upon receipt of a complete application the Community Development Director will set a hearing date to receive evidence concerning the application. Notice of the hearing will be published at least one time in a local paper of general circulation at least one week prior to the hearing. Notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, and all property owners as shown on the last assessment within three hundred feet of the proposed non-conforming use.
3. At the hearing the Civil Enforcement Hearing Officer will review such evidence as may be presented by the applicant or any other interested party. Such evidence may be either written or verbal. The applicant will have the right to rebut any evidence in opposition to the application.
4. The Civil Enforcement Hearing Officer will render a written decision.
5. The Community Development Director, or his designee will present a written argument and present the Town's case to the Civil Enforcement Hearing Officer, and will publish the decision at least one time in a local paper of general circulation.
6. Appeals shall be made as prescribed in Ordinance 99-A152. The appeal time requirements will start from the date of publication of the decision.
7. Existing legal non-conforming uses should make an application as described in Section F (1) within three (3) years of the effective date of this ordinance. Fees will be waived during this period. After the three-year 'grace' period, the presumption shall be that a non-conforming use is not legal as described in this ordinance. The Town will regularly and appropriately advertise and publicize this requirement in an effort to bring all non-conforming uses to apply within the three-year period.