

**154.14. NONCONFORMITIES****154.14.01 Purpose and Scope**

Within the districts established by this Code or by amendments that may later be adopted, there exist the following:

- A. Non-conforming lots;
- B. Non-conforming uses of land;
- C. Non-conforming structures;
- D. Non-conforming uses of land and structures in combination; and
- E. Non-conforming characteristics of use;

which were lawful before this Code was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Code or future amendments hereto. It is the intent of this Code to permit these nonconforming uses to continue until they are removed, but not to encourage their survival. It is further the intent of this Code that nonconforming uses shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses which are prohibited elsewhere in the same district.

**154.14.02 Illegal Uses**

Illegal uses existing at the time this Code is enacted shall not be validated by virtue of its enactment.

**154.14.03 Burden of Owner to Establish Legality of Nonconformity**

The burden of establishing the legality of a nonconformity that is lawfully existing under the provisions of this Code is upon the property owner of the nonconformity and not upon the Town.

**154.14.04 Avoidance of Undue Hardship**

Nothing in this Code shall be deemed to require a change in the plans, construction, or designated use of any building or development on which construction was lawfully begun prior to the effective date of adoption or amendment of this Code and upon which actual building construction has been carried on diligently. Where demolition or removal of an existing building has been substantially begun prior to rebuilding, such demolition or removal shall be deemed to be construction, provided that the work shall be carried on diligently.

**154.14.05 Uses Under Conditional Use Provisions are Not Nonconforming Uses**

Any use which is permitted as a conditional use in a district under the terms of this Code shall be deemed a conforming use in such district without further action.

**154.14.06 Ordinary Repair and Maintenance**

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not

exceeding ten percent (10%) or the current replacement cost of the nonconforming structure and market value of real estate, or nonconforming portion of the structure, whichever the case may be, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this Section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

#### **154.14.07 Nonconforming Lots**

##### **A. Single Nonconforming Lots of Record**

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this Code notwithstanding limitation imposed by other provisions of this Code. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

##### **B. Lots in Combination**

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Code, and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Code; and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Code, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Code.

#### **154.14.08 Nonconforming Uses Of Land**

##### **A. Authority to Continue**

Where, at the time of adoption of this Code, lawful uses of land exist which would not be permitted by the regulations imposed by this Code, the uses may be continued so long as they remain otherwise lawful, subject to the following provisions.

##### **B. Enlargement of Structure**

No such nonconforming uses shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Code.

##### **C. Moving**

No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this Code.

**D. Termination by Discontinuance or Abandonment**

If any such nonconforming uses of land are discontinued or abandoned for more than one (1) year (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this Code for the district in which such land is located.

**E. New Construction**

No additional or accessory structure not conforming to the requirements of this Code shall be erected in connection with such nonconforming use of land.

**154.14.09 Nonconforming Structures****A. Authority to Continue**

Where a lawful structure exists at the effective date of adoption or amendment of this Code that could not now be built under the terms of this Code by reason of restrictions on area, lot, coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful.

**B. Structural Alteration or Enlargement**

No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.

**C. Extension of Use**

A nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Code, but no such use shall be extended to occupy any land outside such building.

**D. Moving**

Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

**E. Damage or Destruction**

Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than fifty percent (50%) of the fair market value of the building immediately prior to the damage, it shall not be reconstructed except in conformity with the provisions of this Code.

**154.14.10 Nonconforming Uses of Structures or of Structures and Land in Combination**

If a lawful use involving individual structures, or a structure and land in combination, exists at the effective date of adoption or amendment of this Code that would not now be allowed in the district under the terms of this Code, the lawful uses may be continued so long as it remains otherwise lawful, except as otherwise provided below

**A. Structural Alteration or Enlargement**

No existing structure devoted to a use not permitted by this Code in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

**B. Substitution of Nonconforming Use**

If no structural alterations are made, any nonconforming use of a structure or structure and land, may, upon appeal to the Board of Zoning Appeals, be changed to another nonconforming use provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accordance with other provisions of this Code.

**C. Change in Use**

Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.

**D. Termination by Discontinuance or Abandonment**

When a nonconforming use of a structure, or structure and land combination, is discontinued or abandoned for more than one year (except when government action impedes access to the premises), the structure or structure and land in combination shall not thereafter be used except in conformity with the regulations of the district in which it is located.