

SECTION 200 – NONCONFORMING PROVISIONS

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201 General Provisions

- A. The use of land or structures that are existing and lawful at the time of adoption, or subsequent amendment, of this Ordinance may continue and be expanded subject to the provisions of this Section.
- B. **Transfer of Ownership.** Ownership of land and structures which remain lawful but become nonconforming by the adoption or amendment of this Ordinance may be transferred and the new owner may continue the nonconforming use subject to the provisions of this Section.
- C. **Restoration of Unsafe Property.** A nonconforming structure declared unsafe by the Code Enforcement Officer, or damaged by fire or other casualty, shall be permitted to be strengthened or restored to safe condition.

202 Nonconforming Structures

- A. **Expansion of a Nonconforming Structure.** A nonconforming structure may be expanded, repaired, maintained or improved subject to the provisions of this Section.
 - 1. The expansion shall be attached to the existing structure,
 - 2. **Nonconforming front, side or rear yard setback:** A structure may be expanded within a nonconforming yard area so long as the expansion does not further extend into a nonconforming front, side or rear yard setback,
 - 3. **Nonconforming height limit:** Where a structure contains a portion that is nonconforming in its height at the time of the adoption of this ordinance, the height of the remaining portion of the building may be increased so long as the expansion does not extend further than the existing height of the structure.
 - 4. All other setback requirements in the appropriate zoning district shall be met.

5. An expansion of a nonconforming use within an expanded nonconforming structure must meet the standards of Section 203,
6. Expansion with a variance:
 - (a) An applicant for an expansion that cannot meet the standards of Subsection 2. or 3., above must seek a variance from the Board of Appeals.
 - (b) The Board of Appeals shall use the appropriate variance standards of Section 1100 for the review of applications under this Section.
- B. Reconstruction or Replacement: A nonconforming structure that is damaged or destroyed by any cause, or is demolished, may be reconstructed or replaced, provided that a building permit is obtained within two (2) year of the date of damage, destruction, or demolition. The replacement or reconstruction of any nonconforming portion of the structure must be located within the original building footprint. The replacement or reconstruction may increase or decrease the number of square feet of floor area, but may not create any additional, or expand any existing, nonconformity, except as allowed by Section 202.A., above.
 1. The Code Enforcement Officer shall grant a one (1) year extension for the reconstruction or replacement of structures that are involved in litigation.

203 Nonconforming Uses

- A. Expansion of a Nonconforming Use. The structure(s) in which a nonconforming use is located may be cumulatively expanded subject to the provisions of this section.
 1. General Provisions. The following provisions shall apply to all non-conforming uses:
 - (a) The expansion shall not allow for the introduction of new, or increase the number of, nonconforming uses on the property.
 - (b) The expansion shall not cause a structure to become non-conforming according to the dimensional requirements of the applicable zoning district.
 - (c) Expansion within an existing nonconforming structure shall meet the requirements of Section 202.
 2. Non-Residential Uses. A nonconforming non-residential use may be expanded as follows:
 - (a) By ten percent (10%) of the size existing on July 8, 1976 with approval from the Code Enforcement Officer,

- (b) Between eleven percent (11%) and one-hundred percent (100%) of the size existing on July 8, 1976 with approval from the Board of Appeals. The Board of Appeals shall use the following standards in granting approval:
 - (1) That the expanded use shall not reduce the Level of Service, as defined, on adjacent roadways or intersections,
 - (2) That the property has adequate sight distance for the location and type of expanded use,
 - (3) That the amount of parking required to meet the minimum ordinance requirements for the expanded use shall be provided,
 - (4) That the amount of noise, odors, vibrations, smoke, dust and air discharges of the expanded use shall be equal to or less than the present use,
 - (5) That the amount of surface water runoff from the site shall not be increased,
 - (6) That an adequate buffer has been provided to screen an expanded commercial or industrial use from any abutting residential use.
 - (7) The Board of Appeals may impose conditions of approval that are specific to the standards in this Subsection 203.A.1.(b).
 - 3. Residential Uses - A nonconforming residential use may be expanded as long as the building in which it is located meets either:
 - (a) The dimensional standards of the zoning district in which it is located, or
 - (b) The nonconforming structures or buildings standards in Section 202, above.
- B. Discontinuance of a Nonconforming Use
- 1. A nonconforming use which is discontinued for a period of two (2) year may not be resumed. Use of the land, building or structure shall thereafter conform to the provisions of this chapter.
 - 2. When a nonconforming use is changed to a permitted use the following provisions shall apply:
 - (a) The use shall thereafter conform to the provisions of this Ordinance, and
 - (b) The nonconforming use may not thereafter be resumed.

- C. Change of a Nonconforming Use. The Board of Appeals may grant permission for the conversion of an existing nonconforming use into another nonconforming use subject to the following provisions:
1. The new nonconforming use will be more conforming to the intent of the Land Use Ordinance,
 2. The existing non-conforming use shall be discontinued and shall not thereafter be resumed if the Board of Appeals approves the conversion.
 3. In determining whether the proposed use is in greater conformance with the Ordinance, the Board of Appeals must find:
 - (a) That the existing use was made non-conforming by the adoption or amendment of the Land Use Ordinance and is not a home occupation,
 - (b) That the proposed use shall not reduce the Level of Service on adjacent roadways or intersections,
 - (c) That the property has adequate sight distance for the location and type of proposed use,
 - (d) That the amount of parking required to meet the minimum ordinance requirements for the proposed use shall be provided,
 - (e) That the amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed use shall be equal to or less than the present use,
 - (f) That the amount of surface water runoff from the site shall not be increased,
 - (g) That the hours of operations of the proposed use are compatible with the surrounding land uses.
 - (h) That an adequate buffer has been provided to screen a proposed commercial or industrial use from any abutting residential use.
 4. The Board of Appeals may impose conditions of approval that are specific to the standards in Subsection 203.C.3.

204 Nonconforming Lots of Record

- A. A single family dwelling may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, provided that such lot shall be in separate ownership and not contiguous with any other lot in the same ownership and that all other dimensional standards of this chapter shall be met. In the event that all other

dimensional standards cannot be met, the property owner may apply for a variance in accordance with Section 1100 of this Ordinance.

- B. If two (2) or more contiguous lots or parcels are in single ownership of record at the time of adoption or amendment of this chapter and if all or part of the lots do not meet the dimensional and area requirements of this chapter, the lands involved shall be considered to be a single parcel for the purpose of this chapter, and no portion of said parcel shall be built upon or sold which does not meet dimensional and area requirements of this chapter; nor shall any division of the parcel be made which creates any dimension or area below the requirements of this chapter. Two (2) contiguous lots in single ownership prior to July 8, 1976, which each have an existing residential structure(s) on them and which do not meet the requirements of this Ordinance are exempt from this section and may be divided. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.
- C. Lots in subdivisions approved by the Windham Planning Board after February 7, 1972, are exempt from the provisions of Section 204.A. and Section 204.B., above.

205 Nonconforming Mobile Home Parks

- A. Expansion of a nonconforming mobile home park shall conform to the dimensional standards of the zoning district in which the park is situated; granted,
 - 1. No lot within the Park that is served by public sewer shall be less than the smaller of 6,500 S.F. or the area of the smallest residential lot size allowed in the Town of Windham.
 - 2. No lot within the Park that is served by septic shall be less than twenty thousand (20,000) square feet in size; or
 - 3. The size of any lot served by a central on-site subsurface waste water disposal system approved by the Department of Health and Human Services shall be at least 12,000 s.f. in area, provided that the overall density of the mobile home park is not greater than one home for every 20,000 s.f.

206 Non-Conforming Shipping Containers

- A. Residential Districts
 - 1. No more than one (1) non-conforming shipping container shall be allowed on any lot.
 - 2. Any shipping container located in a residential district on, or prior to, September 21, 2000 may continue to be used if it meets the following requirements:

- (a) The property owner shall provide documentation, to the satisfaction of the Code Enforcement Officer, that the shipping container was located on the site on, or prior to, September 21, 2000.
 - (1) Information from abutting property owners, in the form of a letter stating the existence of the shipping container on or around a specific date, could assist in this documentation.
- (b) Permit Required
 - (1) A non-conforming shipping container shall obtain a permit from the Code Enforcement Officer. The permit shall document the following:
 - (i) The container's existence, size, and location on the property.
 - (2) The permit must be acquired by March 21, 2001 unless good cause can be shown to the Code Enforcement Officer
 - (i) If a permit is not requested by September 21, 2001, the shipping container must be removed, unless the shipping container was located on the property prior to November 9, 1999.

Section 200 Amendments

Order 11-153; Date 09-13-2011 Change to Nonconforming Structures