

Article V Nonconformities

5.1 Applicability. Unless more specific rules exist elsewhere in these regulations regarding particular nonconformities, the following will apply to all nonconforming parcels, nonconforming structures, and nonconforming uses.

5.2 Nonconforming parcel. A parcel that is legally subdivided, and existed as of the effective date of these regulations, may be developed even if the parcel no longer conforms to one or more dimensional standards of the district in which it sits due to the adoption or revision of these regulation or due to the transfer or taking of land for a public purpose (e.g., road widening), provided:

5.2.1 Where a parcel is served by, and able to connect to, sewer **and** water service, such development is in accordance with all other applicable provisions of these regulations.

5.2.2 Where a parcel is served by, and able to connect to, sewer **or** water service, such development is in accordance with all other applicable provisions of these regulations and shall comply with the requirements of Chapter 1 Wastewater System and Potable Water Supply Rules for the State of Vermont as well as all applicable federal regulations.

5.2.3 Where a parcel is not served by, and unable to connect to, sewer and water service, such development is in accordance with all applicable provisions of these regulations and shall comply with the requirements of Chapter 1 Wastewater System and Potable Water Supply Rules for the State of Vermont, as well as all applicable federal regulations.

5.3 Nonconforming structure. The following rules apply to nonconforming structures:

5.3.1 In any district other than a Flood Hazard Overlay District, a nonconforming structure may be maintained or repaired provided such action does not create a horizontal, vertical, or volumetric increase to portions or features of a structure that are nonconforming. The performance of normal repair and maintenance does not constitute “development” or “land development” as defined by these by-laws.

5.3.2 No person shall commence the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any nonconforming structure without first obtaining a permit pursuant to these bylaws.

5.3.2.1 Any proposed Development in a particular zoning district that fails to satisfy lot coverage, minimum lot size, or front, side or rear yard requirements in that district may be allowed as a Conditional Use in that district, if the applicant affirmatively establishes that (a) the conditions

established in Sections 4.4.5.1 through 4.4.5.6 inclusive are satisfied, (b) the degree to which the proposed Development fails to meet such requirements is no greater than the degree to which properties in the immediate vicinity also fail (if at all) to meet such requirements, and (c) the proposed Development is a Permitted Use or a Conditional Use in that district. The maximum amount of lot coverage that may be considered under conditional use provisions is 125% of the maximum listed by district in the chart depicting "Town of Lyndon Minimum Requirements for Development". For example, if a maximum lot coverage in a particular district is 20%, the Development Review Board may approve lot coverage of over 20%, up to a maximum of 25%, if the proposal satisfies conditional use criteria.

5.3.2.2 When granting Conditional Use Approval, the DRB may, in addition to those requirements and standards specifically authorized by this by-law, impose other conditions it finds are necessary to address public safety concerns associated with the original nonconforming structure and to protect the best interests and property values of adjacent properties, the affected neighborhood, or the town.

5.3.3 If a nonconforming structure is substantially damaged or destroyed, the structure may be rebuilt and used as before provided that the applicant can affirmatively establish and the DRB finds that:

5.3.3.1 The criteria outlined in section 5.3.2 are met; and

5.3.3.2 The applicant submitted their application for reconstruction within 12 months of the structure being damaged or destroyed.

5.3.4 Substantial improvements to nonconforming structures in a Flood Hazard Overlay District must meet the development standards in Subsection 11.5.

5.4 Nonconforming uses. The following rules apply to nonconforming uses:

5.4.1 Nonconforming uses shall not be enlarged, extended, expanded, or intensified except as allowed below:

5.4.1.1 An applicant may request conditional use approval to allow for a nonconforming use (a) to move within, and/or utilize more of, the structure in which it is located, or (b) to move within, and/or utilize more of, the parcel upon which it is located, provided that the applicant can affirmatively establish and the DRB finds that the moved or expanded

nonconforming use meets the performance standards in Subsection 4.4.5 of this bylaw.

5.4.1.2 An applicant may request conditional use approval to allow a nonconforming use to be changed to another nonconforming use. Such a request will be allowed only if the applicant affirmatively establishes, and the DRB finds, the following:

5.4.1.2.1 That the proposed use is no more intensive in nature than the existing nonconforming use; and

5.4.1.2.2 The proposed use is more substantially, materially, and outwardly similar to the uses allowed in the applicable zoning district than the existing nonconforming use.

5.4.1.3 Subsection 5.4.1.2 does not apply to applications proposing to change from a nonconforming use to a conforming use. Once a nonconforming use has been made conforming, it shall not be made nonconforming again.

5.4.2 Abandonment. A use shall be considered abandoned if the use has been discontinued for a period of one year. Intent to resume a use shall not confer the right to do so.

5.4.2.1 An extension to the one-year period may be granted by the DRB after a public hearing and on the basis of documented evidence of an ongoing, good faith effort to reestablish the nonconforming use. Such evidence may include but not be limited to application(s) to the DRB, bid documents, records of expenditures, newspaper advertisements, and/or real estate listings. Any request for such an extension shall be submitted in writing prior to the expiration of the one (1) year time limit specified in Subsection 5.4.2.

5.4.2.2 A nonconforming use shall not be re-established if it has been abandoned or replaced with a new use except:

5.4.2.2.1 If the nonconforming use was in a damaged structure or destroyed structure then the use may be re-established if the structure is repaired or rebuilt, provided that the applicant demonstrates and the DRB finds that re-established nonconforming use will be no more intensive in nature than it was originally.

Definitions

The phrase “substantially damaged or destroyed” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its condition before it was damaged would equal or exceed 50% of the market value of the structure before the damage occurred.

“Maintenance” means any work performed where the purpose and effect of such work is to preserve, protect, retain, or replace a portion of an existing structure, to prevent deterioration, decay, or damage, with the intent to protect or sustain the existing structure in its original condition.

“Repair” means any work performed where the purpose and effect of such work is to correct, mend, fix, or restore deterioration, decay, or damage to a portion of an existing structure, with the intent to restore the existing structure to its original condition prior to the occurrence of such deterioration, decay or damage.