

§6 NON CONFORMING USES, BUILDINGS & LOTS *Revised 04-16-17*

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 as listed below:

- 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. The vertical or horizontal alteration of a structure located within the Special Flood Hazard Area which is proposed to have its first finished floor elevated to at least the Base Flood Elevation, have no basements or cellars below the BFE and in the AE Zone is designed to be fully compliant with §31-11.5.2 (Elevated Buildings) shall be permitted. Structures in the VE zone shall comply with all the requirements in §31-11.3.5. See §6-3.1, §13-4 and §14-4.
- 6-2.1.8 Except for entry stairs, platforms and open porches necessary for ingress and egress which shall be permitted to be added to a structure within the Special Flood Hazard Area provided that the first finished floor is elevated to at least the Base Flood Elevation and has no basements or cellars below the BFE and in the AE Zone is designed to be fully compliant with §31-11.5.2 (Elevated Buildings) which would not represent an increase in non-conformity. Structures in the VE zone shall comply with all the requirements in §31-11.3.5.

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.

Expansion or extension of an existing structure located within the Special Flood Hazard Area which is proposed to have its first finished floor elevated to at least the Base Flood Elevation, has no basement or cellar below the BFE and if in the AE Zone is designed to be fully compliant with

§31-11.5.2 (Elevated Buildings) shall be permitted. Structures in the VE zone shall comply with all the requirements in §31-11.3.5.

Entry stairs, platforms and open porches necessary for ingress and egress which are proposed to be added to an existing structure within the Special Flood Hazard Area shall be permitted provided that the first finished floor is elevated to at least the Base Flood Elevation and has no basements or cellars below the BFE and in the AE Zone is designed to be fully compliant with §31-11.5.2 (Elevated Buildings) which would not represent an increase in non-conformity. Structures in VE zone shall comply with all the requirements in §31-11.3.5. The maximum allowable additional coverage shall be 15 square feet per entrance per foot that the building is to be elevated above average grade to at least the BFE up to a maximum of 225 square feet.

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.
- (d) such restoration or reconstruction of any structure within the Special Flood hazard Area as defined herein shall comply with all of the requirements of §31-11, "Floodplain 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.

** Entry stairs, platforms and open porches necessary for ingress and egress which are proposed to be added an existing structure within the Special Flood Hazard Area that will have its first finished floor elevated to at least the Base Flood Elevation, has no basements or cellars below the BFE and in the AE Zone is designed to be fully compliant with §31-11.5.2 (Elevated Buildings) shall be permitted. Structures in the VE zone shall comply with all the requirements in §31-11.3.5. In no case may such structures be less than 5 feet from any property line.

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:

Lot Size Max.	Maximum Stories	Maximum Feet (See Building Height)
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'

* Building Height for principal buildings may be increased by up to an additional five feet; (Maximum of 31') for an existing or new structure located within the Special Flood Hazard Area specifically, when such structure is proposed have its first finished floor elevated to at least the Base Flood Elevation has no basement or cellar below the BFE and in the AE Zone is designed to be fully compliant with §31-11.5.2 (Elevated Buildings). Structures in the VE

zone shall comply with all the requirements in §31-11.3.5. One additional foot of Building Height as measured from average grade shall be permitted for each foot that the average grade is below the Base Flood Elevation up to a maximum of five feet. Wet flood proofed enclosed spaces below the first floor with a head room of five feet or less shall not be considered a story. (See §5-2 Definition of Crawl Space).

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.

6-6.2 Non-Conforming Automobile Dealerships:

Notwithstanding the above, on lots with a minimum of one hundred fifty (150) feet of frontage on the Post Road, and fifty (50) feet of residentially zoned frontage, a minimum of thirty thousand (30,000) square feet of land, a portion of which lies in each of the GBD and Residence A zones, and legally used as an Automobile Dealership (New), where the Planning and Zoning Commission makes a finding that the redevelopment significantly improves the streetscape and public safety, a nonconforming building and its uses may be allowed full or partial redevelopment, in the nonresidential portion of the lot, provided the redevelopment shall result in no increase of building coverage, total coverage, or floor area, except as provided below and subject to the standards herein.

Redevelopment shall be pursuant to Special Permit and Site Plan review, consistent with §34, §35, §43 and §44, except that where nonconformities legally exist, such nonconformities may be maintained, reduced, and/or reorganized, subject to the approval of the Planning & Zoning Commission and the standards outlined below:

- 6-6.2.1 Building Coverage shall not be increased except to accommodate new building façade materials and/or entryways.
- 6-6.2.2 Exemptions from calculated floor area may include:
 - (a) Internal vehicular queuing and drop-off for customer vehicle servicing;
 - (b) Up to three (3) showroom display vehicles, each not to exceed a 9'x18' dimension.
- 6-6.2.3 Existing first floor area being removed and/or exempted under this section may be relocated to the second floor above, and up to the face of the existing floor below which may or may not conform to setback standards provided it does not exceed 25% of the floor area below inclusive of any atrium space and is a minimum of fifty (50') feet from the nearest residential district and adequately screened to the satisfaction of the Planning and Zoning Commission.
- 6-6.2.4 Legally nonconforming display, employee and visitor parking spaces may be maintained or reorganized, provided that overall front landscaping is enhanced to the satisfaction of the Planning and Zoning Commission.
- 6-6.2.5 Existing conforming or legally non-conforming signage may be updated in its current location and/or relocated to a more appropriate location, as determined by the Planning and Zoning Commission.
- 6-6.2.6 Notwithstanding §32-8, grading within five (5') of a front property line may be allowed for removal, installation, and/or relocation of curb cuts, driveways, landscaping, sidewalks and parking subject to the approval of the Planning and Zoning Commission.