

# ARTICLE VII NON-CONFORMITIES

## SECTION 700 GENERAL.

Any **building** or structure, or any use of any **building, structure**, or land, which was in existence at the time of the adoption of this Ordinance, or any amendment thereto and which does not conform to the current provisions of this Ordinance, shall be considered legal non-conforming and may be continued indefinitely without complying with the provisions of this Ordinance, if such use, **building**, or structure, at the time it came into existence, was in compliance with all applicable laws, Ordinances, and regulations then in effect, subject to the provisions of this Article. Any uncertainty over the application of this Article to particular property shall be resolved by administrative decision made by the Zoning Administrator. Such an administrative decision may be appealed to the Zoning Board of Adjustment under 801.1.

## SECTION 701 NON-CONFORMING LOTS.

A new use or structure, or addition to an existing structure, *if otherwise* allowed by this Ordinance, may be established on a **lot** which has **frontage** meeting the requirements of RSA 674:41 and which was a legal **lot of record** as of the date of adoption or amendment of this Ordinance even though such **lot** fails to meet the minimum **lot area, frontage** or **lot width** requirements of this Ordinance; provided, however, that such **lots** shall be subject to all other requirements of this Ordinance; and provided, further, that if the owner of the **lot** also owns contiguous land which, if merged with the **lot** in question would cause the legal **lot of record** to be either conforming or less non-conforming with respect to **lot area, frontage** and **lot width** requirements, then such use, **structure** or addition shall not be permitted unless the **lots** are voluntarily merged under RSA 674:39-a.

## SECTION 702 NON-CONFORMING USES.

### 702.1 Change of Use.

A conforming use shall not be changed to a **non-conforming use**. A **non-conforming use** may, as a **special exception**, be changed to another **non-conforming use** provided that the Board of Adjustment shall find that the proposed use is equally appropriate or more appropriate to the district than the existing **non-conforming use**.

### 702.2 Resumption of Use.

Any **non-conforming use** shall not be re-established if such use has been discontinued for a period of two (2) years; provided, however, that the Zoning Board of Adjustment, upon an appeal from the Zoning Administrator's decision concerning such discontinuance, may permit the re-establishment of the same use if it finds: (a) that no action incorporating an intent to abandon the **non-conforming use** has been taken by the owner or occupant, including but not limited to a change to a permitted use or razing or remodeling of a **building**; and (b) that the failure to continue or re-establish the use during the two-year

period was due to economic, regulatory or other forces beyond the control of the owner or occupant.

702.3    Restoration of Use.

Any **non-conforming use**, except signs, may be restored after involuntary damage from any cause provided the same **non-conforming use** is reinstated within two years of such damage. If the reconstruction of the premises is not substantially completed within two years, the **non-conforming use** of such **building** shall be deemed to have been discontinued, unless such **non-conforming use** is carried on without interruption in an undamaged part of the **building**.

702.4    (Reserved).

702.5    Expansion of Use.

- A.    The Zoning Board of Adjustment may, by **special exception**, permit a legal **non-conforming use** pursuant to Section 700 to be expanded, provided that the following tests are met in lieu of Section 801.3:
1.    The proposed expansion must reflect the nature and purpose of the existing **non-conforming use**, and must be closely related to the manner in which the property was used at the time the restriction was enacted.
  2.    The proposed expansion must be merely a different manner of utilizing the same use, and shall not constitute a use which is different in character, nature, or kind.
  3.    The proposed expansion shall not have a substantially different effect on the neighborhood in which the property is located.
- B.    As part of a proposed expansion under subsection A, the Board of Adjustment may allow a legal **non-conforming use** to expand into an addition to an existing **building** occupied by the **non-conforming use** provided that the gross floor area of the addition is no greater than ten percent (10%) of the size of the gross floor area of the existing **building** measured as of January 22, 2020.
- C.    The Board of Adjustment may attach conditions and parameters to its decision, as set forth in Section 802.4.B, to assure that the scope of the expansion continues to meet the standards set forth in subsection A.
- D.    In no case shall a legal **non-conforming use** in whole or in part be allowed to expand into a new **building**, or (except as allowed under subsection B) to any portion of the **lot** that was not occupied by the **non-conforming use** at the time such use became non-conforming pursuant to Section 700.

## SECTION 703      NON-CONFORMING BUILDINGS AND STRUCTURES.

### 703.1      Expansion.

Expansion of non-conforming parts of buildings or structures, may be allowed only by **special exception** as set forth herein. For purposes of this section, the term “expansion” shall include any increase in the footprint and/or volume of the non-conforming part of the **building** or structure.

- A.      The Board shall make each of the following findings:
1.      The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.
  2.      The proposed expansion shall not render the lot size proportionately less adequate, i.e. any aspect of the **building** or **structure** that is currently non-conforming cannot be made more non-conforming in the absence of a **variance**.
  3.      These **special exception** standards shall apply in addition to the standards in Section 801.3 of the Zoning Ordinance.
- B.      Those parts of any **non-conforming building** or **structure** which are conforming may be expanded provided the expansion is conforming and the use is not changed.

### 703.2      Abandonment, Discontinuance, Destruction.

Any **non-conforming building** or **non-conforming structure** which is partially or wholly destroyed by reason of any cause whatsoever, including obsolescence, fire, explosion, storm, floods, or other acts of God, may be resumed or restored and operated in its former non-conformity if same is done within two (2) years; thereafter, any **non-conforming building** or **structure** shall not be re-established if such **building** or **structure** has been discontinued for a period of two (2) years or more; provided, however, that the Zoning Board of Adjustment, upon an appeal from the Zoning Administrator’s decision concerning such resumption or restoration, may permit the resumption or restoration of the same **building** or **structure** if it finds: (a) that no action incorporating an intent to abandon the **non-conforming building** or **structure** has been taken by the owner or occupant, including but not limited to a change in **non-conforming use** to razing or remodeling the **building** or structure; and (b) that the failure to resume or restore the use during the two-year period was due to economic, regulatory, or other forces beyond the control of the owner or occupant.

Non-conforming signs shall be subject to Section 608.8 in lieu of Section 703.2. Non-conforming sign structures shall be subject to Section 703.2.