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Proposed Amendment # 3: Nonconformities

Article III. General Regulations

Section 3.1 Abandoned & Damaged Structures

(B) Damaged Structures.

(3) Any repair or restoration of a nonconforming structure that increases the degree of noncompliance nonconformance is subject to review by the Development Review Board under Section 3.8.

Section 3.7 Nonconforming Lots

(A) In accordance with the Act [§ 4412(2)], any lot in individual, separate and nonaffiliated ownership from surrounding properties legally in existence on the effective date of these regulations may be developed for the purposes allowed in the district in which it is located, even though not conforming to minimum lot size requirements, if the lot is not less than one-eighth (1/8) of an acre in area and has a minimum width or depth dimension of not less than 40 feet.

(B) If a nonconforming lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot(s), for the purposes of these regulations. However, the lot shall not be deemed merged and may be separately conveyed if:

- (1) the lots are conveyed in their preexisting, nonconforming configuration; and
- (2) on the effective date of these regulations, each lot had been developed with a water supply and wastewater disposal system; and
- (3) at the time of transfer, each water supply and wastewater disposal system is functioning in an acceptable manner; and
- (4) the deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in state statutes [10 V.S.A.. Chapter 64].

(C) Structure on a Nonconforming Lot. In order to allow for the reasonable use and development of a nonconforming lot, including the construction, enlargement, expansion, modification or relocation of a structure on the lot, the Development Review Board, in accordance with the Act [§ 4414(8)], may reduce a required setback distance by no more than 50% as necessary to accommodate physical site, lot area or boundary [lot line] constraints, subject to conditional use review under Section 5.4, and waiver provisions under Section 9.6(B). A minimum setback distance of 10 feet shall be maintained; any further reduction in the required setback distance shall require variance approval under Section 9.6(C).

Section 3.8 Nonconforming Uses & Structures

(A) **Nonconforming Use.** In accordance with the Act [§ 4412(7)], any use of land or a structure legally in existence as of the effective date of these regulations which does not meet the requirements of these regulations shall be considered a nonconforming use. A nonconforming use may be continued indefinitely in accordance with the Act, subject to the following limitations:

- 1 (1) A nonconforming use may be changed to another nonconforming use that is of the same or a more
2 restrictive nature only with the approval of the Development Review Board, subject to conditional use
3 review under Section 5.4.
- 4
- 5 (2) A nonconforming use shall not be re-established if it has been changed to or replaced by a
6 conforming use, or it has been discontinued for a period of one (1) year, regardless of the intent to
7 resume the nonconforming use.
- 8
- 9 (3) A nonconforming use may be re-established within a structure or portion thereof which has been
10 damaged or destroyed, only if repair or reconstruction of the structure is started within one (1) year of
11 the date of such damage or destruction, and is completed and the use reestablished within one (1) year
12 thereafter in accordance with Section 3.1.
- 13

14 (B) **Nonconforming Structure.** In accordance with
15 the Act [§ 4412(7)], any structure, or portion thereof,
16 legally in existence as of the effective date of these
17 regulations which does not meet the requirements of
18 these regulations shall be considered a nonconforming
19 structure. A nonconforming structure may continue to
20 be occupied indefinitely, subject to the following
21 limitations:

Degree of Noncompliance

Nonconformance: For purposes of these regulations, any enlargement or other structural alteration which extends the footprint of a structure within a required setback area, or increases the height or volume of a structure within a required setback distance, or above the maximum allowed height (i.e., the amount of encroachment), shall be considered to increase the degree of noncompliance nonconformance.

- 23 (1) A nonconforming structure may undergo normal
24 maintenance and repair without a zoning permit,
25 provided that such action does not increase the degree of ~~noncompliance~~ nonconformance.
- 26
- 27 (2) A damaged nonconforming structure may be repaired or reconstructed in accordance with Section
28 3.1, provided that the repair or reconstruction does not increase the degree of ~~noncompliance~~
29 nonconformance.
- 30
- 31 (3) A nonconforming structure may be structurally enlarged, extended, expanded, modified or moved,
32 with the issuance of a zoning permit under Section 9.3, provided that the enlargement, expansion,
33 modification or relocation does not increase the degree of ~~noncompliance~~ nonconformance, and meets
34 all other applicable requirements of these regulations.
- 35
- 36 (4) In accordance with the Act [§ 4414(8)], in the event that no reasonable alternative exists due to
37 physical site or lot line constraints, the Development Review Board may allow a nonconforming
38 structure to be structurally enlarged, expanded, extended, modified or relocated in a manner that
39 increases the degree of ~~noncompliance~~ nonconformance up to 50%, but not less than 10 feet as a
40 conditional use subject to conditional use review under Section 5.4, and waiver provisions under
41 Section 9.6(B) (see Set Back Reduction Table in Attachments). Under these provisions, the DRB
42 may reduce the required setback up to 50%, however a minimum setback distance of 10 feet must be
43 maintained. Any further ~~increase in the degree of noncompliance~~ decrease in the required setback
44 distance shall require variance approval by the Development Review Board under Section 9.6.
- 45
- 46 (5) A nonconforming structure located in a Flood Hazard Overlay District may be relocated, structurally
47 improved, enlarged or reconstructed as allowed under these regulations, subject to conditional use
48 review and applicable flood hazard area requirements under Section 5.5 (F). [Amended effective 8/9/2010.]
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52 Article X. Definitions

53 **Degree of Noncompliance:** ~~The degree to which a structure, or portion thereof, does not meet required~~
54 ~~dimensional standards, including setback distances, as specified in these regulations~~ For purposes of

1 ~~these regulations, any enlargement or other structural alteration which extends the footprint, height or~~
2 ~~volume of a structure within a required setback distance, or above the maximum allowed height (i.e., the~~
3 ~~amount of encroachment), shall be considered to increase the degree of noncompliance. See also~~
4 ~~Nonconforming Structure.~~

5
6 **Degree of Nonconformance:** The degree to which a structure, or portion thereof, does not meet required
7 dimensional standards, including setback distances, as specified in these regulations. For purposes of
8 these regulations, any enlargement or other structural alteration which extends the footprint of a structure
9 within a required setback area, or increases the height or volume of a structure within a required setback
10 distance, or above the maximum allowed height (i.e., the amount of encroachment), shall be considered to
11 increase the degree of nonconformance. See also Nonconforming Structure.
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