

**ARTICLE VII
NON-CONFORMING USES**

Section 700 Continuance

Except as otherwise provided in this Article, the lawful use of land or buildings existing at the date of the adoption of this Ordinance may be continued although such use or building does not conform to the regulations specified by this Ordinance for the zone district in which such land or building is located. The following provisions shall, however, apply to all non-conforming uses:

- A. A non-conforming lot shall not be further reduced in size.
- B. A non-conforming building shall not be enlarged, extended or increased unless such enlargement would tend to reduce the degree of non-conformance.
- C. A non-conforming use shall not be expanded except as may be authorized by Section 702.
- D. A non-conforming use may be changed into a conforming use. When a non-conforming use is changed to conform to the requirements of this ordinance, the use of the building or tract of land shall not be changed again except in accordance with these regulations.
- E. Where such non-conforming use is upon the land itself and not enclosed within a structure or where such use involves the removal of soil, minerals or the excavation of gravel or rock or other material, such use may be continued upon the land being so used at the time of the adoption hereof. Any such non-conforming use of the land may be extended or expanded to include any part of the plot or parcel of land now being used or held in reserve for future use, provided such enlargement does not involve the use of any lot acquired or the excavation rights of which were acquired by the excavation operator after the effective date of this Ordinance. However, such extension or expansion of such non-conforming use shall comply with the setback and fencing requirements of this Ordinance.

Section 701 Certification of Non-Conformance

After the effective date of this Ordinance upon the written request of the user of any structure or premises or at the instance of the Zoning Officer an examination by the Zoning Officer of any existing use shall be made. A report of the findings made upon such examination shall thereafter be filed with the Zoning Board of Appeals **and Planning Board**, together with a proposed certificate of existing non-conforming use which shall clearly describe the premises and structure, if any, referred to, and shall specify the nature and extent of such existing use. Such certificate shall be prepared in ~~triplicate~~ quadruplicate [1998], one (1) copy of which shall be maintained by the Zoning Officer, one (1) copy of which shall be furnished to the Zoning Board of Appeals, **one (1) copy of which shall be furnished to the Planning Board**, and one (1) copy to be furnished to the owner or user.[1998]

Section 702 Expansion of Non-Conforming Uses

A non-conforming use shall not be expanded except in conformance with the procedures and regulations specified in this section. In any district a non-conforming use may be expanded in the following manner: In no case shall such enlargement extend beyond the lot occupied by such non-conforming use. The extension of a non-conforming use hereunder shall be subject to special permit authorized by the **Planning Town** Board and shall be considered on an individual case. Applications for a special permit shall be obtained from the Zoning Officer. The **Planning Town** Board shall issue or deny special permits, as the case may be, taking into consideration the following [1998]

A. Standards applicable to granting a special permit authorizing the expansion of a non-conforming use:

- 1) The location and size of the non-conforming use, the nature and intensity of the operations involved in or conducted in connection with it, the size and site in relation to it, the location of the site in respect to streets giving access thereto shall be such that such use will be in harmony with the orderly development of the district in which it is located.
- 2) Screening or other protective measures shall be adequate to protect any adjacent properties from objectionable aspects of any such expansion of the non-conforming use.
- 3) Off-street parking areas shall be of adequate size for the particular use, and access drives shall be laid out so as to achieve maximum safety.
- 4) The **Planning Town** Board may prescribe any condition that it deems to be necessary or desirable and may require a site plan of the proposed expansion of the non-conforming use with pertinent

information to aid it in making a determination on the application.[1998]

B. Public Hearing:

1) Before authorizing a special permit to expand the non-conforming use, the **Planning Town** Board shall give public notice and hold a public hearing on the application for such permit in the same manner as required by law for amendments to the zoning ordinance.[1998]

2) The **Planning Town** Board shall hold a public hearing within sixty-two (62) days after a completed application is received, and shall render its decision upon said application within thirty (30) days thereafter of such public hearing. [1998]

C. Limitations:

A special permit authorizing the expansion of a non-conforming use shall be deemed to authorize only the particular use or uses specified in the permit and shall apply only to the area specified in the permit. A special permit issued under this section shall expire within six (6) months from the date of issuance if the non-conforming use is not expanded or enlarged.

Section 703 Abandonment

In any district, whenever a non-conforming use of land, premises, building or structure, or any part or portion thereof, has been discontinued for a period of one (1) year, such non-conforming use shall not thereafter be re-established, and all future uses shall be in conformity with the provisions of this ordinance. Such discontinuance of the active and continuous operation of such non-conforming use, or part of portion thereof, for such period of one (1) year, is hereby construed and considered to be an abandonment of such non-conforming use, regardless of any reservation of an intent not to abandon same or of an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such non-conforming use of the land and premises, the abandonment shall be construed and considered to be completed and all rights to re-establish or continue such non-conforming use shall thereupon terminate.

Section 704 Restoration

A. Any building damaged by fire or other unintentional causes to the extent of more than fifty (50) percent of its true value shall not be repaired or rebuilt except in conformance with this ordinance. In the case of a permitted restoration of a non-conforming use, such

restoration shall not increase the degree of non-conformance.

B. Nothing in this Law shall prevent the strengthening or restoring to a safe condition any wall or roof which has been declared unsafe by the Zoning Officer **and/or the Wyoming County Building Department.** [1998]

C. Normal maintenance repairs and incidental alteration of a building or other structure containing a non-conforming use shall be permitted, provided it does not extend the area or volume of space occupied by the non-conforming use.

D. Any building which is non-conforming due to insufficient yard distances or lot area shall not be considered a non-conforming use. Any alterations or structural changes may be accomplished within the existing frame of said building, but any additions shall conform to the specific setback and yard distance requirements of this Ordinance.

Section 705 District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one (1) district to another of a different classification, the foregoing provisions shall also apply to any non-conforming uses existing therein or created thereby.

Section 706 Construction Approval Prior to this Ordinance

Nothing herein contained shall require any change in plans, construction or designated use of a building complying with existing laws, a permit for which had been duly granted before the date of adoption of this ordinance or any applicable amendment thereto.