

SECTION 400.

NONCONFORMANCE

401. General application.

A nonconformance is a building, structure, sign, or parcel of land, or use thereof, which was lawfully existing at the time of the adoption or amendment of this zoning ordinance, and not in conformity with the provisions of such ordinance or amendment.

401.1. *Lawfully existing or established.* A building, structure, sign, or parcel of land, or use thereof, was lawfully existing or lawfully established if it was in existence prior to March 22, 1957, or was established in conformance with the zoning ordinance in effect at the time the use was first established. For the purposes of this ordinance, the placement or use of a sign, with or without any other structure or use, is considered a use of land. A lot was lawfully existing or lawfully established if it was of record or shown on a recorded plat prior to March 27, 1957 and was separately owned.

401.2. *Prior illegal establishment.* Any use or structure illegally established prior to the effective date of this ordinance or any amendment thereto shall not be granted nonconformance status nor shall it become legally established subsequent to the effective date of this ordinance or any amendment thereto.

401.3. *Nonconforming by use.* A lawfully established use of land, building, or structure which is not a permitted use in the zoning district in which it is located, as set forth in section 300, is nonconforming by use.

401.4. *Nonconforming by dimension.* A lawfully established building, structure, or parcel of land not in compliance with the dimensional regulations of this ordinance is nonconforming by dimension. Dimensional regulations include all regulations of this ordinance, other than those pertaining to the permitted uses. A lawfully established building, structure, parcel of land, or use thereof, not in compliance with the parking regulations of this ordinance, as set forth in section 700, is also nonconforming by dimension. A lawfully existing or lawfully established lot that is not in compliance with the dimensional regulations of the zoning ordinance, including, but not limited to, those regulations for minimum lot size, lot width and lot frontage (also known as a substandard lot of record), is also nonconforming by dimension.

401.5. *Nonconforming by dwelling units.* A building or structure containing more dwelling units than are permitted by the use regulations of this ordinance shall be nonconforming by use. A building or structure containing a permitted number of dwelling units by the use regulations of this zoning ordinance, but not meeting the lot area per dwelling unit regulations, shall be nonconforming by dimension.

401.6. *Most restrictive regulations to apply.* A building, structure or parcel of land nonconforming by more than one factor, such as by use, dimension, area or parking, shall comply with all regulations of this section. Where the regulations conflict, the most restrictive regulations shall apply.

401.7. *Existence by variance or special use permit.* A nonconforming building, structure, sign, or parcel of land or the use thereof, which exists by virtue of a variance or a special use permit (or a special exception) granted by the board, shall not be considered a nonconformance for the purposes of this section, and shall not acquire the rights of this section. Rather, such building, structure, sign, parcel of land, or use thereof, shall be

considered a use by variance or a use by special use permit and any moving, addition, enlargement, expansion, intensification or change of such building, structure, sign, parcel of land or use thereof, to any use other than a permitted use or other than in complete conformance with this ordinance, shall require a further variance or special use permit from the board.

402. Building or structure nonconforming by use.

Nonconforming uses are incompatible with and detrimental to permitted uses in the zoning districts in which they are located. Nonconforming uses cause disruption of the comprehensive land use pattern of the city, inhibit present and future development of nearby properties, and confer upon their owners a position of unfair advantage. It is intended that existing nonconforming uses shall not justify further departures from this ordinance for themselves, or for any other properties.

402.1. *Treatment in residential zones.* Nonconforming uses in residential zones are to be treated in a stricter fashion than nonconforming uses located in nonresidential zones. Due to the disruption which nonconforming uses cause to the peace and tranquility of a residential zone, nonconforming uses therein should be eventually abolished or reduced to total conformity over time.

402.2. *Continuance of use.* Nothing in this ordinance shall prevent or be construed to prevent the continuance of a nonconforming use of any building or structure for any purpose to which such building or structure was lawfully established.

402.3. *Maintenance and repair.* A building or structure containing a nonconforming use may be maintained and repaired except as otherwise provided in this section.

402.4. *Moving.* A building or structure containing a nonconforming use shall not be moved in whole or in part either on or off the lot on which it is located unless the use contained within such building or structure is made to conform to the use regulations of the zone in which it is relocated.

402.5. *Addition and enlargement.* A building or structure containing a nonconforming use shall not be added to or enlarged in any manner, including any addition or enlargement of floor area or volume, unless the use contained within such building or structure, including such addition and enlargement, is made to conform to the use regulations of the zone in which it is located.

402.6. *Expansion.* A nonconforming use of a building or structure shall not be expanded into any other portion of the building or structure which contains a conforming use or which is unoccupied or unused.

402.7. *Intensification.* A nonconforming use of a building, structure or land shall not be intensified in any manner. Intensification shall include, but not be limited to, increasing hours of operation, increasing the number of dwelling units or increasing the seating capacity of a place of assembly. However, this section shall not prohibit the reconfiguration of existing dwelling units within a building or structure so long as such reconfiguration complies with the requirements of subsection 402.6.

402.8. *Change of use.*

(A) *Residential zones.* Within any residential zone, a nonconforming use shall only be changed to a

permitted use or to the same actual use. A nonconforming use, if changed to a permitted use, may not be changed back to a nonconforming use.

- (B) *Nonresidential zones.* Within any nonresidential zone, a nonconforming use may be changed to a permitted use, or to the same use code listed under section 300. A nonconforming use, if changed to a permitted use, may not be changed back to a nonconforming use.

402.9. *Abandonment.* If a nonconforming use is abandoned, it may not be reestablished. Abandonment of a nonconforming use shall consist of some overt act, or failure to act, which would lead one to believe that the owner of the nonconforming use neither claims nor retains any interest in continuing the nonconforming use unless the owner can demonstrate an intent not to abandon the use. An involuntary interruption of nonconforming use, such as by fire and natural catastrophe, does not establish the intent to abandon the nonconforming use. However, if any nonconforming use is halted for a period of one year or more, the owner of the nonconforming use will be presumed to have abandoned the nonconforming use, unless that presumption is rebutted by the presentation of sufficient evidence of intent not to abandon the use.

403. Building or structure nonconforming by dimension.

Buildings or structures that are nonconforming by dimension are likely to cause overcrowding and congestion in the neighborhoods, contribute to unhealthy conditions and are contrary to the purposes of this ordinance. Buildings or structures that are nonconforming by dimension cause disruption of the comprehensive land use pattern of the city, inhibit present and future development of nearby properties, and confer upon their owners a position of unfair advantage. It is intended that existing buildings or structures that are nonconforming by dimension shall not justify further departures from this ordinance for themselves or for any other property.

403.1. *Continuance.* Nothing in this ordinance shall prevent or be construed to prevent the continuance of the use of any building or structure nonconforming by dimension for any purpose to which such building or structure was lawfully established.

403.2. *Maintenance and repair.* A building or structure nonconforming by dimension may be maintained and repaired except as otherwise provided in this section.

403.3. *Moving.* A building or structure which is nonconforming by dimension shall not be moved in whole or in part to any other location on the lot in which it is located unless every portion of such building or structure is made to conform to all of the dimensional requirements of the zone in which it is located.

403.4. *Addition and enlargement.* A building or structure nonconforming by dimension shall not be added to or enlarged in any manner, unless such addition or enlargement conforms to all of the dimensional regulations of the zone in which the building or structure is located.

403.5. *Expansion.* A conforming use within a building or structure which is nonconforming by dimension (other than by lot area per dwelling unit) may be expanded into any other portion of the building or structure which is unoccupied or unused.

403.6. *Intensification.* A conforming use within a building or structure which is nonconforming by dimension may be intensified, provided that such intensification is in conformance with the use and lot area per

dwelling unit regulations, if applicable, for the zone in which it is located.

403.7. *Change in use.* A conforming use within a building or structure which is nonconforming by dimension may be changed to any other conforming use.

403.8. *Demolition.* A building or structure nonconforming by dimension, if voluntarily demolished, shall not be reconstructed, unless it conforms with the dimensional regulations of the zone in which it is located. Such voluntary demolition shall be considered an abandonment of the use. If such building or structure is involuntarily demolished, destroyed, or damaged, it may be repaired or rebuilt to the same size and dimension as previously existed.

404. Land nonconforming by use.

404.1. *Continuance.* The lawfully established nonconforming use of land, where no building is involved, may be continued, provided that no such nonconforming use of land shall in any way be expanded or intensified either on the same or adjoining property.

404.2. *Change of use.* The nonconforming use of land shall not be changed to a different use, unless such use conforms to the use regulations of the zone in which it is located.

404.3. *Private residential areas.* An existing dwelling located on tax assessor's plat 305, lot 58 (Spring Green/Gaspee Point), plat 315, lot 136 (Cole Farm), plat 369, lot 111 (Buttonwoods Beach) and plat 380, lot 3 (Rocky Beach) may be enlarged or altered upon receipt of a building permit without approval from the zoning board of review being necessary; provided that such construction complies with the front and corner side yard and rear yard requirements of table 2A, Dimensional Regulations, for the district in which it is located. (Ord. No. O-94-34, § I, 12-19-94)

405. Land nonconforming by area.

405.1. *Enlargement of undersized lots.* Lawfully established lots which have less than the minimum area requirements may be maintained and may be changed by adding additional land to such lots without prejudice to the rights of the owner of such lots pursuant to the provisions of this section.

405.2. *Merger of abutting nonconforming lots.* If two or more abutting nonconforming lots are held in the same ownership as of June 20, 1988 or subsequent thereto, such lots shall be combined for the purposes of this ordinance in order to conform or more nearly conform to any of the dimensional requirements of this ordinance for the district in which the lots are located and such lots shall not be sold separately.

405.3. *Subdivision of merged lots.* A lot which has been created by the merger of two or more nonconforming lots, as provided for in subsection 405.2, may be subdivided or combined with other lots and subdivided, provided that approval is given by the planning board, and provided that the following requirements are met:

- (A) In all zones, where any portion of the lot is within the "coastal zone" as defined by the Rhode Island coastal resources management council, all dimensional requirements for the zone, including without limitation, area, frontage and lot width, shall be met.

- (B) In the A-7 zone, all dimensional requirements for the zone, including, without limitation, area, frontage and lot width, shall be met.
- (C) In the A-10, A-15 and A-40 zones, if public water and sewer is provided, then the minimum lot area, frontage and lot width of the resulting lot or lots may be reduced to not less than 80 percent of the requirements for the zone. If public water is not provided, then all dimensional requirements for the zone, including, without limitation, area, frontage and lot width, shall be met.

405.4. *Residential use of nonconforming lots.* In any district in which dwellings are permitted, a dwelling may be erected, enlarged, or altered on a nonconforming lot or on two or more abutting nonconforming lots subject to the following:

- (A) Where such lot or lots contain less than 7,000 square feet, or have less than 50 feet of frontage, it shall be necessary for the owner thereof to receive from the zoning board of review a dimensional variance in order to construct a new dwelling thereon; and the zoning board of review shall designate the maximum size of the dwelling to be placed thereon and its location on said lot or lots and any other conditions it deems reasonably necessary to promote the purposes of this ordinance.
- (B) Where such lot or lots contain 7,000 square feet or more, and have a minimum frontage of at least 50 feet, a new dwelling may be constructed thereon without approval from the zoning board of review being necessary provided that such construction complies with the front and corner side yard, side yard and rear yard requirements of table 2A, Dimensional Regulations, for the district in which such lot is located.
- (C) Where there is an existing dwelling on a nonconforming lot prior to the effective date of this ordinance or any amendment thereto, such dwelling may be enlarged or altered without approval from the zoning board of review being necessary provided that such alteration or enlargement complies with the front and corner side yard, side yard and rear yard requirements of table 2A, Dimensional Regulations, for the district in which such lot is located.
- (D) Any vacant lot in a residence district or any existing dwelling on a lot in a residence district made nonconforming by the adoption of this ordinance or by the adoption of the predecessor to this ordinance on June 20, 1988, may be built upon, enlarged or altered after the effective date of such ordinance provided that the construction, alteration or enlargement complies with the front and corner side yard, side yard and rear yard requirements of table 2A, Dimensional Regulations, for the district in which such lot was formerly located, provided that the requirements of subsection 405.2 are met, if applicable.

405.5. *Nonresidential use of nonconforming lots.* In any district where nonresidential uses and structures are permitted, such structure may be erected, enlarged, or altered on a nonconforming lot with at least 50 feet of frontage provided that such alteration, enlargement or construction complies with the front and corner side yard, side yard and rear yard setback requirements of table 2B, Dimensional Regulations, for the district in which such lot is located and further provided that the requirements of subsection 405.2, and of sections 505 and 700

are met, if applicable.

406. Buildings and structures nonconforming by parking.

A building or structure is considered nonconforming by parking if the lawfully established use of the building or structure does not meet the parking requirements of section 700.

406.1. *Addition, enlargement, expansion and intensification.* Any building or structure nonconforming by parking may not be added to, enlarged, expanded or intensified, unless brought into full compliance with the parking requirements of section 700, such that sufficient parking is provided for the entire structure including the original portion and the addition, enlargement, expansion or intensification.

406.2. *Change of use.* A building or structure nonconforming by parking may be changed to a different use other than residential use, pursuant to all other provisions of this ordinance, provided that such new use meets the following parking requirements. The number of additional parking spaces required shall be the difference between the number of spaces required for the proposed use and the number of spaces required for the previous use. In the event that the new use requires less parking spaces than the previous use, no additional parking spaces need be supplied. However, none of the existing parking spaces shall be eliminated unless the total number of spaces required by this ordinance for the new use are provided.

407. Nonconformance as to landscaping requirements.

Any existing nonresidential use that is nonconforming as to the minimum landscaped open space requirements of this ordinance or the landscaping and screening requirements of subsection 505 may be enlarged in terms of gross floor area, volume, or use without satisfying such landscaping requirements provided that such enlargement is less than or equal to a 25 percent increase of the structure or use of the lot. Any such enlargement exceeding such 25 percent increase shall comply with such landscaping requirements for the entire lot and use.