



SECTION 10

Non-conformity

10.0 [Reserved]

10.1 INTENT

It is the intent of these regulations that *non-conformities* are not to be expanded, that they should be changed to conformity as quickly as the fair interest of the owners permit and that the existence of any existing *non-conformity* will not of itself be considered grounds for the approval of a variance for any other property.

10.2 DEFINITIONS

A *nonconforming use, building, other structure or lot*, is one which existed lawfully, whether by variance or otherwise, on the date these regulations or any amendment hereto become effective, and which fails to conform to one or more of the provisions of these regulations or the amendment hereto. No *non-conforming use, building, other structure or lot* will be deemed to have existed on the effective date of these regulations unless 1) it was actually in being on a continuous basis on the date, and 2) if the *nonconformity* is a *use*, the *use* had not been discontinued within the meaning of Paragraph 10.6.4.

10.3 APPROVED APPLICATIONS AND CERTIFICATES

Unless otherwise specifically provided in these regulations, nothing in these regulations will require any change in the *use* of any land, *building* or other *structure*, or part thereof, or in the area, location, *bulk* or construction of any *building* or *structure* for which an application for Certificate of Zoning Compliance will have been lawfully approved and any required Certificate of Zoning Compliance will have been lawfully issued even though the *use, building* or *structure* does not conform to one or more provisions of these regulations or any amendment hereto.

10.4 CHANGE IN PLANS

Subject to the time limitations of Paragraph 10.4.1, nothing in these regulations will be deemed to require any change in the proposed *use* of any land, *building* or *structure* or the area, location, *bulk* or construction of any *building* or *structure* for which an application for Certificate of Zoning Compliance has been lawfully approved and any required Building Permit and Sanitation Permit will have been lawfully issued even though the proposed *use, building* or *structure* does not conform to one or more provisions of these regulations or any amendment hereto.

10.4.1 **Time Limit.** An approved application for Certificate of Zoning Compliance authorizing a proposed *use, building* or *structure* that does not conform to one or more provisions of these regulations or any amendment hereto, as described in Paragraph 10.4, will become null and void unless 1) the *use* authorized will have been established within one (1) year from the effective date of the Regulations or any amendment thereto when the *use* does not involve the establishment of a *building* or

structure for which an application for Certificate of Zoning Compliance must be approved or 2) the authorized *use, building* or *structure* will be established and completed within two (2) years from the effective date of the Regulations or any amendment thereto. The *Commission* may grant extensions of the period for additional period not to exceed one (1) year after public hearing for good cause demonstrated to the satisfaction of the *Commission*.

- 10.4.2 **Previous Regulations.** The provisions of Paragraphs 10.4 and 10.4.1 will apply to Permits and Certificates of Occupancy issued under the Zoning Regulations in effect prior to these regulations.

10.5 CASUALTY

If any *nonconforming building* or *structure* or any *building* or *structure* containing a *nonconforming use* is damaged or destroyed by fire or other casualty, the *building* or *structure* may be restored and the *nonconforming use* resumed to the extent that the *building, structure* or *use* existed at the time of the casualty, provided that the restoration is started within a period of two years from the casualty and is diligently prosecuted to completion.

The Zoning Commission at the request of the Zoning Enforcement Officer may grant extensions of the requirement to commence construction when mass damage or destruction occurs as a result of a natural disaster or declared storm. The *Commission* may grant no more than two (2), one (1) year extensions for any storm event for a total of no more than four (4) years for any one casualty.

10.6 NONCONFORMITY – USE

The following provisions and limitations will apply to a *nonconforming use* of land, *building* or other *structure*:

- 10.6.1 **Enlargement.** No *nonconforming use* of land will be enlarged, extended or altered, and no *building* or *structure* or part thereof, devoted to a *nonconforming use* will be enlarged, extended, reconstructed or structurally altered, except where the result of the changes is to reduce or eliminate the *nonconformity*. No *nonconforming use* of a *building* or *structure* will be extended to occupy land outside the *building* or *structure* or space in another *building* or other *structure*.
- 10.6.2 **Change.** No *nonconforming use* of land, *buildings* or other *structures* will be changed to any *use* which is substantially different in nature and purpose from the former *nonconforming use*, except the *uses* that are permitted *uses* in the *District* in which they are to be located. No *nonconforming use* of land, *buildings* or other *structures* if once changed to conform or to more nearly conform to these regulations will thereafter be changed so as to be less conforming again.
- 10.6.3 **Moving.** No *nonconforming use* of land will be moved to another part of a *lot* or outside the *lot*, and no *nonconforming use* of a *building* or *structure* will be moved or extended to any part of the *building* or *structure* not manifestly arranged and designed for the *use* at the time the *use* became *nonconforming*, and no *building* or *structure* containing a *nonconforming use* will be moved, unless the result of any the move is to end the *nonconformity*.



- 10.6.4 **Discontinuance.** No *nonconforming use* of land, *buildings* or other *structures* which will have been discontinued with intent to abandon the *use* will thereafter be resumed or replaced by any other *nonconforming use* as set forth in Connecticut Gen. Statute Section 8-3(c) (4) as may be amended.
- 10.6.5 **Performance Standards.** Any *use* of land, *buildings*, *structure*, which does not conform to one or more of the performance standards will not be changed to increase the *nonconformity* but may be changed to decrease or eliminate the *nonconformity*. Any *nonconformity* so reduced or eliminated will not be resumed.

10.7 NONCONFORMITY – IMPROVEMENTS

The following provisions and limitations will apply to *nonconforming buildings*, other *structures*, and improvements:

- 10.7.1 **Enlargement.** No *nonconforming building*, other *structure* or improvement will be enlarged, extended, reconstructed or structurally altered unless the enlargement or extension is conforming.
- 10.7.2 **Change.** No *nonconforming building*, other *structure* or improvement if once changed to conform or to conform more nearly to these regulations will thereafter be changed to be *nonconforming* or less conforming again.
- 10.7.3 **Moving.** No *nonconforming building*, other *structure* or improvement will be moved unless the result of the moving is to reduce or eliminate the *nonconformity*.
- 10.7.4 **Signs.** *Signs* of a size or type not permitted in the *district* in which they are situated, or which are improperly located or illuminated, or which are *nonconforming* in any other way, will be considered *nonconforming structures* under this section, and any increase in size, *illumination* or *flashing* of the *signs* will be deemed to be an enlargement or extension constituting an increase in *nonconformity*.
- 10.7.5 **Off-Street Parking and Loading.** Any *lot*, *use*, *building* or *structure* which does not conform to one or more of the parking and loading provisions will continue to conform to the provisions to the extent that it conforms on the effective date of the Section. Any *use* of land, *buildings* or other *structures* which does not conform to one or more of the provisions will not be changed to a *use* which would need additional off-*street* parking or loading spaces to comply with the provisions unless the spaces are provided as required for the new *use*.
- 10.7.6 **Site Development and Landscaping.** Site development and landscaping which fails to conform to requirements of these regulations will be deemed a *nonconformity*. No *use* for which the site development and landscaping are required will be enlarged, extended, changed or moved and no *building* or *structure* for which the site development and landscaping are required will be enlarged, extended, moved or reconstructed unless the *nonconformity* is

eliminated, provided that the *Commission* may grant a Special Exception *Use* to authorize continuation or reduction of the *nonconformity*.

10.8 NONCONFORMITY – LOTS

A *lot*, which fails to meet the area, shape or *frontage* or any other applicable requirements of these regulations pertaining to *lots*, may be used as a *lot*, and a *building* or *structure* may be constructed, reconstructed, enlarged, extended, moved or structurally altered, provided that all of the following conditions and requirements are met:

- 10.8.1 If the *lot* fails to meet the area requirements of these regulations, the owner of the *lot* will not also be the owner of contiguous land which in combination with each *lot* that fails to conform would make a *lot* that conforms or more nearly conforms to the area requirements of these regulations pertaining to *lots*;
- 10.8.2 The *use*, *building* or *structure* will conform to all other requirements of these regulations;
- 10.8.3 If permitted in the *District*, the *lot* may be used for the construction of a single detached *dwelling* for one (1) *family* provided that the *lot* contains an area of not less than twelve thousand five hundred square feet (12,500 s.f.) if served by public water supply or forty thousand square feet (40,000 s.f.) if not so served and provided that the requirements of Paragraph 10.8.2 are met;
- 10.8.4 If permitted in the *District*, an existing single detached *dwelling* for one (1) *family*, so occupied, on the *lot* may be reconstructed, enlarged, extended or structurally altered, provided that the requirements of Paragraph 10.8.2 are met; and
- 10.8.5 If permitted in the *District*, the construction of a single detached *dwelling* for one (1) *family* on a pre-existing non-conforming *lot* may be permitted provided the requirements of Paragraph 10.8.1 & Paragraph 10.8.2 are met and a single detached *dwelling* for one (1) *family* exists on the property at the time of application.

10.9 TITLE

No change of title, possession or right of possession affects the right to continue a *nonconforming use*, *building* or other *structure*.

10.10 REPAIR

Nothing in this section prohibits work on any *nonconforming building* or *structure* when required by law to protect the public health or safety, if the work does not increase the *nonconformity*. Nothing in this section prohibits work on ordinary repair and maintenance of a *nonconforming building* or *structure* or replacement of existing materials with similar materials.

A pre-existing *non-conforming* deck, open air porch, overhang, stairs or *accessory* storage structure of one hundred twenty square feet (120 s.f) or less may be replaced when a repair is infeasible, impractical or unsafe due to the structural integrity of the *building/structure* as long as the replacement does not result in an enlargement or change of the *non-conformity*.



10.11 FLOOD PLAIN COMPLIANCE

Any *non-conforming* residential *structure* located in a *Special Flood Hazard Area* that can be raised above the base flood elevation to bring the *structure* into compliance with the Flood Plain Management Ordinance of the Town of Old Saybrook or to exceed the Ordinance to meet the five-hundred (500) year flood *zone* will be permitted on the following conditions:

- A. A letter is provided and signed by a licensed and insured contractor or structural engineer at the time of application for Certificate of Zoning Compliance. The letter must clearly state in detail, the process of raising the *structure* and that the individual performing the act does not anticipate that the *building/structure* will collapse or be destroyed in the process of raising *building/structure*.
- B. The *structure* will be raised within the existing footprint unless it is proposed to be moved to more nearly conform to a *setback* regulation that the *structure* is currently violating.
- C. No part of the *structure* will be demolished and rebuilt unless it is in compliance with the Zoning Regulations.
- D. In the event that the *lot* size and location of the *structure* prohibits the construction of stairways that meet the zoning regulations to enter the *structure*, the applicant will be permitted to put a stairway and landing or elevator that meets no more than the minimum area requirements for a stairway and landing or elevator as defined by State Building Code in effect at the time of application.
- E. In the event that any portion of the *nonconforming structure* is destroyed or damaged by the act of raising the *structure*, the applicant will not be able to rebuild the destroyed areas unless it meets the Zoning Regulations in effect at the time the *structure* was damaged.
- F. Any deviations in plans or unanticipated problems occurred during the project must be immediately reported to the Zoning Enforcement Officer and Building Official.
- G. Any non-conforming *structure* proposed for elevation within a *Special Flood Hazard Area* must be elevated above the base flood elevation and will be located no more than twelve feet (12') above existing grade unless the result is non-compliance with the Town of Old Saybrook Flood Plain Management Ordinance.