

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

ARTICLE VIII – Chapter 190-8 (as last amended 5/21/09 by LL#4-09)

Nonconforming Uses and Structures

A. Non-conforming Uses

- (1) Determination of non-conforming use. Any lawfully established use of property legally existing at the time of the passage of this chapter that does not conform to the regulations thereof, except those established pursuant to the issuance of a use variance, shall be deemed a non-conforming use.
- (2) Continuation. Any non-conforming use which existed lawfully at the time of adoption of this Chapter may be continued, subject to the following provisions.
 - (a) Extension, Modification or Replacement
 - [1] Extension. A non-conforming use shall not be enlarged or extended beyond the area occupied by such use. No structure occupied by or accessory to such use shall be constructed, enlarged, or extended, except for the following:
 - [a] A storage shed or garage that is clearly accessory and incidental to the non-conforming use.
 - [b] An existing Telecommunications Tower where additional antennas and/or equipment cabinets and cables are added without increasing the height of Tower.
 - [2] Replacement. If a non-conforming use is modified or replaced in whole or in part by another use, such use shall conform to this Chapter.
 - [3] In an OR, NCOR, COR, or HCOR District where a mixed-use site is not in conformance with respect to the required proportion of commercial to residential use, an existing commercial use may be replaced with a permitted commercial use, provided no other violations of this Chapter are created by such replacement.
 - (b) Discontinuance. A non-conforming use shall not be changed unless changed to a permitted use. A non-conforming use, if changed to a permitted use, may not thereafter be changed back to a non-permitted use. When a non-conforming use has been discontinued for a period of 18 months or more, intent to abandon or relinquish such non-conforming use shall be presumed, and such non-conforming use shall be deemed abandoned and shall not thereafter be reestablished, and the use shall be changed to a permitted use.

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- (c) Destruction and Restoration. - If any building or structure in which a non-conforming use is conducted is hereafter removed or destroyed through natural or other cause beyond the control of the owner, to the extent that the loss is seventy-five percent (75%) or more of its fair market value at the time of such damage, the use shall not be reinstated. If any such building or structure is intentionally removed or destroyed to any extent by its owner or an agent thereof, the non-conforming use shall not be reinstated.

B. Non-conforming Structures

- (1) Completion. Any building or structure for which construction was lawfully begun prior to the adoption of this Chapter may be completed and used in accordance with the approved plans and specifications for such building or structure.
- (2) Continuation. Any non-conforming building or structure which exists at the time of adoption of this Chapter may be maintained so long as it remains otherwise lawful, subject to the following provisions.
- (a) Modification and Replacement.
- [1] Modification.
- [a] A non-conforming building or structure shall be maintained in such condition as will not constitute a danger to the health, safety, or general welfare of the public.
- [b] A non-conforming building or structure shall not be added to, enlarged, reduced or altered in any manner which increases its non-conformity with the exception of existing Telecommunication Towers as set forth in §190-34 B(1)(a)[2]. Nothing herein, however, shall prevent the strengthening or alteration, to a safe condition, of all or part of a building or structure that is non-conforming, provided that the repair or alteration will not increase the non-conformity.
- [2] Replacement. A non-conforming structure may be replaced to occupy the same footprint on the lot and not exceeding the height of the prior structure, or rebuilt providing greater conformance to the Dimensional Requirements Article of this Chapter, subject to site plan review by the PEDD or Planning Board, if applicable.
- (b) Destruction and Restoration. A non-conforming building or structure destroyed or damaged through natural or other cause

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beyond the control of its owner may be replaced to occupy the same space on the lot and not exceeding the height of the prior structure, or rebuilt providing greater conformance to the Dimensional Requirements Article of this Chapter, subject to site plan review by the PEDD or Planning Board, if applicable. A complete application for Building and Zoning Permit for the replacement must be made within one year from when the damage was sustained.

C. Changes in use of non-conforming lots.

No existing residential use established on a lot which does not conform to the minimum area, width, frontage or building setback requirements as set forth in this chapter for the zoning district in which the lot is located, shall be converted to any permitted nonresidential use; nor shall any existing single-family residential use established on any such lot be converted to any multifamily residential use.

D. Certain uses deemed conforming.

A single-family dwelling, two-family dwelling, cemetery, greenhouse, public utility plant, state, county or municipal building, airport, radio station, religious institution, or a club established pursuant to the New York State Not-For-Profit Corporation Law or otherwise, and qualified as a tax exempt organization pursuant to 25 U.S.C.A. Section 501(c)(7) and applicable regulations, as the same may be amended from time to time, existing in any district at the time of the passage of this chapter, or any amendments thereto, shall be deemed a conforming use upon the lot then devoted to such use, provided that such use has been legally established, and the lot containing these uses may not increase in size.

E. Uses established by variance.

Any use established pursuant to a use variance issued prior to the date of adoption of this chapter, that does not conform to the regulations thereof, shall be permitted to continue subject to any conditions of the variance decision under which it was established. Continuation of all such uses shall be governed by the provisions for extension, modification or replacement of nonconforming uses as set forth in this Article.

F. Administration and Enforcement.

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The provisions of this article shall be primarily administered and enforced by the Building Department, which shall have the power to make necessary inspections.